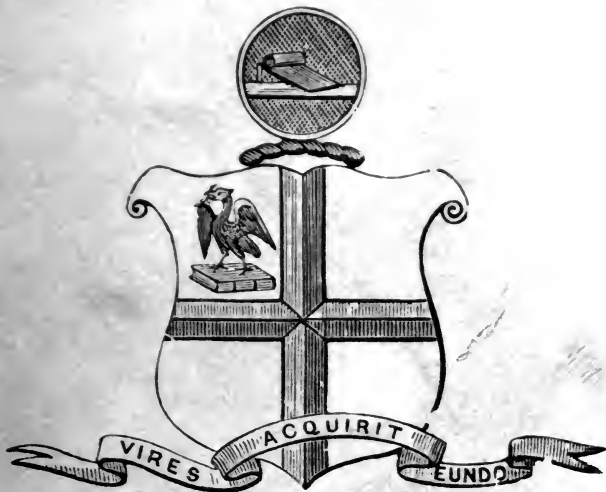


PROCEEDINGS
OF THE
LITERARY AND PHILOSOPHICAL SOCIETY
OF
LIVERPOOL,
DURING THE
ONE HUNDRED AND SECOND SESSION, 1912-1913,
AND THE
ONE HUNDRED AND THIRD SESSION, 1913-1914.

No. LXIII.



LIVERPOOL:
D. MARPLES & CO., 18A SOUTH CASTLE STREET.

1914.



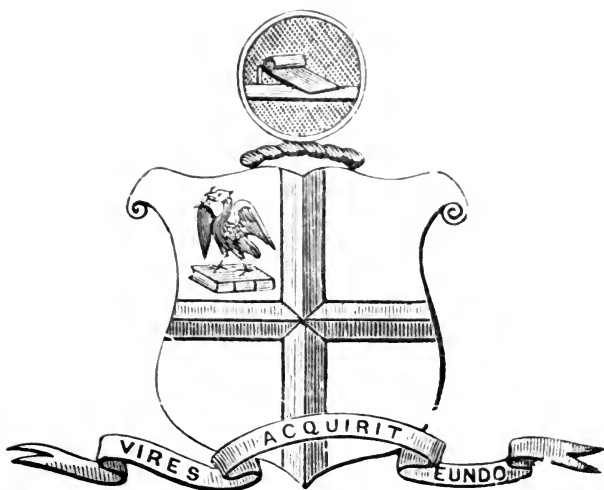
~~18-12-14~~

~~THE ROYAL CANADIAN INSTITUTE~~

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PROCEEDINGS
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PAPERS PRINTED.

SESSION CII.

Mrs. JAMES T. FOARD—"A Criticism on the Work of the late Professor Cesare Lombroso (of Turin): *La Donna Delinquente e La Donna Normale.*"

SESSION CIII.

Rev. EDWARD HICKS, D.D., D.C.L.—"The Outlook in Thought and Culture."

BERTRAM B. BENAS, B.A., LL.B.—"The Methods of Law: a Review of the Phenomena of Comparative Jurisprudence."

WILLIAM H. BROAD, M.D., B.S.—"Prehistoric Man in the Light of recent Discoveries."

J. HAMPDEN JACKSON, F.R.G.S.—"The Law Codes and Priestly Jurisdictions of Ancient Faiths."

ALFRED W. NEWTON, M.A.—"The Birthplace of Arthur Hugh Clough."

LIST OF PRESIDENTS

FROM THE FOUNDATION OF THE SOCIETY IN 1812.

ELECTED.	
1812	Rev. THEOPHILUS HOULBROOKE, LL.B.
1817	WILLIAM ROSCOE, F.R.S., F.L.S.
1831	THOMAS STEWART TRAILL, M.D.
1833	JOSEPH BROOKES YATES, F.S.A.
1839	Rev. JAMES MARTINEAU, LL.D.
1840	Rev. THOS. TATTERSHALL, D.D.
1843	JOSEPH BROOKES YATES, F.S.A.
1846	Rev. JAMES BOOTH, LL.D., F.R.S.
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1852	JOSEPH DICKINSON, M.A., M.D., F.R.S.
1855	ROBERT McANDREW, F.R.S., F.L.S.
1856	THOMAS INMAN, M.D.
1859	Rev. HENRY HUGH HIGGINS, M.A.
1862	WILLIAM IHNE, Ph.D.
1863	JAMES A. PICTON, F.S.A.
1866	Rev. C. D. GINSBURG, LL.D.
1869	J. BIRKBECK NEVINS, M.D.
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1879	[Sir] EDWARD R. RUSSELL.
1881	EDWARD DAVIES, F.C.S., F.I.C.
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1887	JAMES BIRCHALL.
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1890	BARON LOUIS BENAS, J.P.
1892	Rev. GERALD H. RENDALL, M.A., Litt.D.
1894	J. BIRKBECK NEVINS, M.D.
1896	JOHN NEWTON, M.R.C.S.
1897	RICHARD J. LLOYD, D.Lit., M.A., F.R.S.E.
1899	Rev. EDWARD N. HOARE, M.A.
1900	J. MURRAY MOORE, M.D., M.R.C.S., F.R.G.S.
1901	Rev. EDMUND A. WESLEY, M.A.
1903	Rev. WILLIAM E. SIMS, A.K.C.L.
1905	A. THEODORE BROWN.
1906	JAMES T. FOARD.
1907	J. HAMPDEN JACKSON, F.R.G.S., F.C.I.S.
1909	ALFRFD E. HAWKES, M.D.
1910	THOMAS L. DODDS, J.P.
1911	Rev. EDMUND A. WESLEY, M.A.
1912	LIONEL R. WILBERFORCE, M.A.
1913	Rev. EDWARD HICKS, D.D., D.C.L.
1914	GEORGE HENRY MORTON.

COUNCIL.

SESSION CII, 1912-1913.

President :

Professor LIONEL R. WILBERFORCE, M.A.

Ex-Presidents :

Sir EDWARD RUSSELL.	Rev. E. A. WESLEY, M.A.
EDWARD DAVIES, F.C.S., F.I.C.	Rev. W. E. SIMS, A.K.C.L. A. THEODORE BROWN.
WILLIAM CARTER, LL.B., M.D.	J. HAMPDEN JACKSON, F.R.G.S.
Rev. GERALD H. RENDALL, M.A., Litt.D.	ALFRED E. HAWKES, M.D. THOMAS L. DODDS, J.P.

Vice-President :

Rev. EDWARD HICKS, D.D., D.C.L.

Honorary Treasurer :

Lieut.-Col. J. MAXWELL McMASTER, V.D.

Honorary Librarian :

ALFRED W. NEWTON, M.A.

Hon. Secretary :

KENNETH COOK, F.C.A.

Keeper of the Records :

J. HAMPDEN JACKSON, F.R.G.S.

Keeper of the Roll :

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JAMES MELLOR.
GEORGE H. MORTON.
Mrs. SEPTON.
ROLAND J. A. SHELLEY,
F.R.Hist.S.
Mrs. JAMES T. FOARD.

BERTRAM B. BENAS, B.A.,
LL.B.
ROBERT M. CAPON, L.D.S.
NATHAN RAW, M.D.,
M.R.C.P.

COUNCIL.

SESSION CIII, 1913-1914.

President :

Rev. EDWARD HICKS, D.D., D.C.L.

Ex-Presidents :

Sir EDWARD RUSSELL.

EDWARD DAVIES, F.C.S.,
F.I.C.Rev. GERALD H. RENDALL,
M.A., Litt.D.Rev. EDWARD A. WESLEY,
M.A.Rev. WILLIAM E. SIMS,
A.K.C.L.

A. THEODORE BROWN.

J. HAMPDEN JACKSON,
F.R.G.S.

ALFRED E. HAWKES, M.D.

THOMAS L. DODDS, J.P.

Prof. LIONEL R. WILBER-
FORCE, M.A.*Vice-President :*

GEORGE HENRY MORTON.

Honorary Treasurer :

Lieut.-Col. J. MAXWELL McMASTER, V.D.

Honorary Secretary :

WILLIAM J. B. ASHLEY.

Honorary Librarian :

ALFRED W. NEWTON, M.A.

Keeper of the Records :

J. HAMPDEN JACKSON, F.R.G.S.

JAMES MELLOR.

Mrs. SEPHTON.

JOHN W. THOMPSON, B.A.

ROLAND J. A. SHELLEY,
F.R.Hist.S.BERTRAM B. BENAS, B.A.,
LL.B.

ROBERT M. CAPON, L.D.S.

NATHAN RAW, M.D.,
M.R.C.P.EDWARD G. NARRAMORE,
L.D.S.KENNETH COOK, A.C.A.
HARRY WINTER.

ORDINARY MEMBERS

ON THE SOCIETY'S ROLL AT THE CLOSE OF THE 103RD SESSION.

Life Members are marked with an asterisk ().**Associates are marked with a dagger (†).*

-
- †Oct. 9, 1911 Abraham, T. Fell, 53 *Bidston-road, Oxton*
- Nov. 8, 1909 Allen, Edward, M.Inst.C.E., *Glentruan, Aigburth-road*
- Nov. 8, 1909 Anderson, A. H., 9 *Sandon-street*
- Nov. 9, 1908 Ashley, W. J. B., 18 *Highfield-road, Rock Ferry*, HON. SECRETARY
- Nov. 13, 1876 Ball, Geo. Henry, 15 *Gambier-terrace, Hope street*
- Nov. 22, 1909 Barrell, W. J., LL.B., 14 *Harrington-street*
- Oct. 28, 1907 Benas, Bertram B., B.A., LL.B., 4 *Wason-chambers, Harrington-street*
- Jan. 9, 1882 Benas, Phineas A, 5 *Princes-avenue*
- Oct. 9, 1911 Benington, Geo. M., 59 *Newsham-drive*
- Oct. 13, 1913 Bickerton, Thos. Herbert, J.P., L.R.C.P., M.R.C.S., 88 *Rodney-street*
- Nov. 8, 1909 Black, John, 25 *Alexandra-drive, Princes-park*
- Nov. 11, 1912 Blakiston, Miss E. M., *Gresford, Pilch-lane. Knotty Ash*
- Oct. 9, 1905 Blease, W. Lyon, LL.M., 35 *Croxtheth-road, Sefton-park*
- Oct. 7, 1895 Bramwell, Miss, Eye and Ear Infirmary, *Myrtle-street*
- †Oct. 9, 1911 Bremner, Miss L. H., 37 *Rock-park, Rock Ferry*
- †Oct. 9, 1911 Bremner, Miss H. C., 37 *Rock-park, Rock Ferry*

- Oct. 13, 1913 Bright, Allan Heywood, J.P., *Ashfield, Knotty Ash*
- Oct. 13, 1913 Broad, William Henry, M.D., B.S., 64 *Rodney-street*
- †Oct. 8, 1906 Brookfield, Samuel, 18 *Eaton-road, Cressington*
- †Oct. 9, 1911 Brookfield, Mrs. S., 18 *Eaton-road, Cressington*
- Oct. 31, 1892 Brown, A. Theodore, *The Nunnery, St. Michael's Hamlet*, EX-PRESIDENT
- Oct. 13, 1913 Bryant, Arthur Edward, *Clydesdale, 8 Croes-road, Cressington*
- †Oct. 9, 1911 Burrell, Miss C., 53 *Huskisson-street*
- †Oct. 9, 1911 Burrell, Miss A., 53 *Huskisson-street*
- †Oct. 9, 1911 Burton, John T., F.C.I.S., 10 *Orleston-road, New Brighton*
- Oct. 1, 1894 Candlin, W. J., 48 *Prussia-road, Hoylake*
- Oct. 3, 1910 Capon, Robt. M., L.D.S., 49a *Rodney-street*
- Dec. 20, 1909 Cook, Kenneth, F.C.A., *African-house, 6 Water-street*
- †Oct. 9, 1911 Davis, Miss G. Tank, *Hahnemann Hospital, Hope-street*
- Feb. 10, 1908 Dodds, Thomas L., J.P., *Charlesville, Birkenhead*, EX-PRESIDENT
- Nov. 28, 1892 Douglas, Robert R., *Oaklands, Grassendale*
- †Oct. 9, 1911 Dowdall, Thos., 12 *Thorburn-road, New Ferry*
- Nov. 25, 1912 Downham, Rev. F. Linstead, *Home Lea, Oakfield, Anfield*
- Nov. 18, 1889 Duncan, W. A., *Great Charlotte-street*
- Nov. 14, 1887 Eastley, Richard, 10 *Sandford-crescent, Chelston, Torquay*
- †Oct. 9, 1911 English, Miss H. S., 15 *Gambier-terrace*
- Oct. 14, 1907 Foard, Mrs., 21 *Lancaster-road, Birkdale*
- Oct. 29, 1888 Forster, Walter P., 17 *Tarleton-street*
- Oct. 9, 1911 Gill, Geo. Morris, *Willaston, Chester*

- *Dec. 12, 1892 Gladstone, Robert, Jun., B.C.L., M.A., *Vale-road, Woolton*
- Oct. 29, 1877 Green, Robt. Frederick, 66 *Whitechapel*
- †Oct. 9, 1911 Hamilton, Augustus, 14 *Hartington-road*
- †Oct. 9, 1911 Hamilton, Mrs. Augustus, 14 *Hartington-road*
- Oct. 17, 1892 Harley, George, 1 *Water-street*
- †Oct. 9, 1911 Hartley, Miss Eliz., 39 *Plattsville-road, Mossley Hill*
- Oct. 1, 1894 Hawkes, Alfred E., M.D., 3a *Gainsborough-road, EX-PRESIDENT*
- Oct. 25, 1909 Hemingway, John, 1 *Meadowcroft-road, Wallasey*
- Nov. 26, 1906 Hicks, Rev. E., D.D., D.C.L., *The Vicarage, Fairfield, PRESIDENT*
- †Nov. 13, 1905 Hickson, Miss Mary, *Cloughton Firs, Oxtou*
- Oct. 13, 1913 Holland, Jas. Wm. Thurstan, B.A., 43 *Rodney-street*
- †Nov. 27, 1911 Holt, J. G., 17 *Seafield-drive, New Brighton*
- Oct. 23, 1911 Howroyd, Richard R., *The White Lodge, Helsby, Cheshire*
- Mar. 10, 1879 Hughes, John W., *Allerton*
- Oct. 9, 1911 Hutchinson, S. Mason, J.P., *The Marfords, Bromborough*
- Oct. 9, 1911 Hutchinson, Mrs., *The Marfords, Bromborough*
- Jan. 27, 1908 Jackson, Miss E. M., L.R.A.M., *Westdene, New Brighton*
- Oct. 4, 1897 Jackson, J. Hampden, F.R.G.S., F.C.I.S., *Westdene, New Brighton, EX-PRESIDENT*
- Nov. 22, 1909 Jackson, Mrs., *Westdene, New Brighton*
- April 29, 1889 Jones, Morris P., J.P., *Airlie House, Hoylake*
- Oct. 3, 1910 Khodadad, Rev. K. E., B.A. (Durham), *Selside, Olive-lane, Wavertree*
- *Dec. 11, 1871 Leigh, Richmond, M.R.C.S., L.S.A., *Reitz, Orange River Colony, S. Africa*
- Feb. 14, 1910 MacLean, H. C., LL.M., 8 *Harrington-street*

- Oct. 30, 1882 McMaster, Col. John Maxwell, V.D., 19
Castle-street, HON. TREASURER
- Nov. 8, 1909 McMillan, Miss E., 16 *Ashfield-road*
- Nov. 17, 1873 Mellor, James, *Weston, Blundellsands*
- *Oct. 13, 1911 Mellor, John, *Rutland House, Nicholas-road,*
Blundellsands
- March 14, 1910 Morris, Edward E., 18 *Parkfield-road, S.*
- March 14, 1910 Morris, Miss Anne Gladys, 18 *Parkfield-*
road, S.
- March 6, 1882 Morton, George Henry, 14 *Grove-park*, VICE-
PRESIDENT
- *Oct. 21, 1867 Muspratt, Edmund K., Ph.D., J.P., *Seaforth*
Hall, Seaforth
- Nov. 26, 1900 Narramore, Edward G., L.D.S., Eng., 39
Canning-street
- Oct. 1, 1894 Nevins, J. Ernest, M.B., Lond., 32 *Princes-*
avenue
- Nov. 2, 1896 Newton, Alfred William, M.A., 2 *Princes-gate*
West, HON. LIBRARIAN
- Nov. 24, 1910 Parkes, Albert Edward, 15 *Welfield-place,*
Dingle
- †Oct. 9, 1911 Petter, Miss E., 6 *Elm-terrace, Beech-street*
- Nov. 8, 1909 Raffalovich, Rev. I., 12 *Selborne-street*
- Nov. 28, 1910 Raw, Nathan, M.D., 66 *Rodney-street*
- Oct. 31, 1881 Rennie, J. W., 38 *Castle-road, Liscard*
- Oct. 25, 1909 Richardson, R. D., *Southlands, Aigburth-road*
- †Nov. 24, 1910 Roberts, H. A., 19 *Halkyn-avenue*
- Jan. 23, 1911 Robson, Miss Winifred F., 37 *Ivanhoe-road,*
Sefton-park
- *Mar. 25, 1912 Rothschild, Hon. Walter, Ph.D., F.R.S.,
Director Zoological Museum, *Tring, Herts.*
- Oct. 15, 1894 Rutherford, Arthur, B.A., 41 *Castle-street*
- Nov. 12, 1883 Rutherford, William Watson, M.P. (Messrs.
Rutherfords), 41 *Castle-street*
- Dec. 12, 1892 Rye, Miss Ellen L., *Bedford College, Bedford-*
street

- †Oct. 9, 1911 Sears, Miss Annie, 28 *Onslow-road, Fairfield*
- Oct. 15, 1883 Sephton, Mrs., 90 *Huskisson-street*
- Oct. 18, 1897 Shelley, Roland J. A., F.R.Hist.S., *Denbie House, Formby, Lancashire*
- Oct. 31, 1898 Sims, Rev. W. E., A.K.C.L., *The Vicarage, Aigburth, EX-PRESIDENT.*
- Nov. 2, 1903 Sims, Mrs. W. E., *The Vicarage, Aigburth*
- April 4, 1870 Smith, James, 37 *North John-street*
- Feb. 23, 1863 Smith, J. Simm, 4 *Bramley-hill, Croydon*
- Nov. 8, 1909 Stephenson, William, 17 *Pembroke-place*
- Oct. 12, 1908 Stuart, F. Ronald, *Drummoyne, Blundell-sands*
- †Oct. 10, 1904 Symes, Chas., Ph.D., 53 *Canning-street*
- Oct. 4, 1897 Thomas, His Honour Judge, LL.B., B.A., *Homewood, Holly-road, Fairfield*
- Oct. 21, 1878 Thompson, J. W., B.A., Lond. and Victoria, *Hazel-bank, Freshfield*
- Nov. 11, 1912 Warrington, Garfield, 30 *Belvidere-road*
- Oct. 24, 1910 Weightman, Edward J., 29 *Sheil-road*
- Nov. 30, 1896 Wesley, Rev. Edmund Alfred, M.A., 58 *Grove-street, EX-PRESIDENT*
- Nov. 4, 1901 Wesley, Mrs., 58 *Grove-street*
- April 1, 1901 Wilberforce, Prof. L. R., M.A., 5 *Ashfield-road, Aigburth, EX-PRESIDENT*
- †Oct. 9, 1911 Williams, Miss Annie, 29 *Balmoral-road, Fairfield*
- Nov. 24, 1913 Window, Miss Dora McRae, 28 *Onslow-road, Fairfield*
- Oct. 13, 1913 Winter, Harry, 36 *Carlton-road, New Brighton*
- Oct. 13, 1913 Winter, Mrs. Harry, 36 *Carlton-road, New Brighton*
- †Nov. 8, 1909 Wright, Miss, 29 *Greenheys-road, Princes-park*
- †Nov. 8, 1909 Wright, Miss M. T., 29 *Greenheys-road, Princes-park*

HONORARY MEMBERS.

LIMITED TO FIFTY.

- 1.—1870 Professor Sir Henry E. Roscoe, F.R.S., etc., Owens College, *Manchester*
- 2.—1877 Albert C. L. Günther, M.A., M.D., Ph.D., F.R.S., *Kew*
- 3.—1877 Dr. Leidy, Academy of Science, *Philadelphia*
- 4.—1877 Dr. Franz Steindachner, Royal and Imperial Museum, *Vienna*
- 5.—1897 Henry Longuet Higgins, 75 *Gunterstone-road, West Kensington, London, W.*
- 6.—1899 Rev. G. H. Rendall, M.A., Litt.D., *Charterhouse School, Godalming, EX-PRESIDENT.*
- 7.—1903 Edward Davies, F.C.S., F.I.C., 28 *Chapel-street, EX-PRESIDENT*
- 8.—1908 Sir Edward R. Russell, *Victoria-street, EX-PRESIDENT*
- 9.—1911 Hugh Reynolds Rathbone, J.P., *Oakwood, Aigburth*
- 10.—1911 Right Rev. Francis James Chavasse, D.D., LL.D., M.A., *The Palace, Abercromby-square*
- 11.—1911 Right Rev. Wm. Boyd Carpenter, D.D., D.C.L., D.Litt., 14 *Wilton-street, London, S.W.*
- 12.—1911 Right Hon. Augustine Birrell, P.C., K.C., M.P., LL.D., *Irish Office, Old Queen-street, London, S.W.*
- 13.—1911 Sir Dyce Duckworth, Bart., M.D., F.R.C.P., LL.D., 28 *Grosvenor-place, London, S.W.*
- 14.—1911 Sir Donald MacAlister, K.C.B., D.C.L., LL.D., M.D., M.A., B.Sc., F.R.C.P., F.R.G.S., *University of Glasgow*
- 15.—1911 Sir Alfred Wm. Winterslow Dale, M.A., LL.D., J.P., *University of Liverpool*
- 16.—1911 Sir Walter Raleigh, K.C.B., M.A., Prof. of English Litt., *Oxford*

- 17.—1911 William Watson, LL.D., *Devonshire Club, St. James's, S.W.*
- 18.—1911 Mrs. Mary Augusta Ward, *Stocks, Tring*
- 19.—1911 Richard Caton, M.D., LL.D., F.R.C.P., J.P., *Holly Lea, Livingston-drive South, Liverpool*
- 20.—1911 Professor John MacCunn, M.A., LL.D., *Ben Cruash Lodge, Tarbet, Loch Lomond*
- 21.—1911 Professor Wm. Abbot Herdman, D.Sc., F.L.S., F.R.S., *Croxtheth Lodge, Liverpool*
- 22.—1911 Miss Jessie Macgregor, 12 *Chalcot-gardens, Eaton-avenue, London, N.W.*
- 23.—1911 Rev. John Bennet Lancelot, M.A., *Liverpool College, Sefton-park, Liverpool*
- 24.—1912 Right Hon. Edward George Villiers Stanley, P.C., G.C.V.O., C.B., D.L., 17th Earl of Derby, *Knowsley, Prescott*
- 25.—1912 Sir Oliver Joseph Lodge, M.Sc., F.R.S., D.Sc., LL.D., M.I.E.E., *Mariemont, Edgbaston*
- 26.—1912 Sir Wm. Martin Conway, M.A., F.S.A., F.R.G.S., *Allington Castle, Maidstone*
- 27.—1912 Sir Wm. Bower Forwood, D.L., J.P., *Bromborough Hall, Cheshire*
- 28.—1912 Andrew Commins, A.M., LL.D., *The Grange, Bankfield-road, West Derby*
- 29.—1912 Stuart Deacon, B.A., LL.B., J.P., *Gorse Cliff, New Brighton*
- 30.—1912 Henry Duckworth, F.L.S., F.R.G.S., F.G.S., J.P., *Grey Friars, Chester*
- 31.—1912 Professor Andrew Cecil Bradley, LL.D., Litt.D., M.A., 9 *Edwards-square, Kensington, W.*
- 32.—1912 Professor Edward Jenks, B.C.L., M.A., 9 *Old-square, Lincoln's Inn, W.C.*
- 33.—1912 Rev. John Sephton, M.A., 90 *Huskisson-street, Liverpool*

THE LITERARY AND PHILOSOPHICAL SOCIETY OF LIVERPOOL.
CENTENARY FUND ACCOUNT.

Dr.

HONORARY TREASURER'S STATEMENT.

Cr.

RECEIPTS.	£	s.	d.
Donations received and paid into London			
City & Midland Bank Ltd. ...	109	9	9
Interest allowed by the Bank ...	0	5	0
Transfer from Jackson Testimonial A/c....	0	7	9
	£110	2	6
<hr style="border-top: 1px solid black;"/>			
Balance in Bank ...	10	15	4
Transfer from Jackson Testimonial A/c....	0	7	9
	£11	3	1
	<hr style="border-top: 1px solid black;"/>		

PAYMENTS.	£	s.	d.
Payments by Cheque on the Fund Banking A/c. ...	98	19	5
Payment to Adelphi Hotel by the Society's (General A/c.) Cheque ...	9	6	2
Balance ...	1	16	11
	£110	2	6
<hr style="border-top: 1px solid black;"/>			
Transfer to Society's Account			
viz.:—Mr. R. F. Green's Subscription, paid in as a Donation ...	1	1	0
Paid Adelphi Hotel as above ...	9	6	2
Balance ...	0	15	11
	11	3	1
	<hr style="border-top: 1px solid black;"/>		

THE LITERARY AND PHILOSOPHICAL SOCIETY OF LIVERPOOL.

Dr.

HONORARY TREASURER'S STATEMENT—SESSION 1912-13.

Cr.

RECEIPTS.		£	s.	d.	PAYMENTS.		£	s.	d.
Balance in Bank	...	...	15	8	Royal Institution (Extra Rent—Centenary year)	...	8	0	0
Subscriptions received, viz.:	...	...	66	3	Do.	...	12	0	0
63 at £1/1/0	...	...	20	9	Session, 1912-13, Rent	...	...	...	...
39 at 10/6	...	...	...	...	D. Marples & Co.—On A/c. of Bill to 13th Sept., 1912	...	31	7	6
Arrears	...	...	86	12	Do.	...	24	12	6
Life Member—Mr. John Mellor	...	...	4	4	Index Vol.—Apl./July, 1912	...	18	19	9
Volumes sold	...	...	10	10	Do.	...	14	14	8
Interest allowed by Bank	...	...	5	18	Mrs. Ellick—Refreshments	...	1	1	0
Mr. E. Allen paid his subscription twice, once personally and once through his Bankers	...	...	0	12	W. H. Tomkinson—Lantern, 25th Nov., 1912	...	0	7	3
	...	...	1	1	Postages	...	0	2	2
	...	...	1	1	Carriage of Volumes	...	1	3	6
	...	...	...	...	Hon. Treasurer's Expenses, Collector's Commission	...	0	7	6
	...	...	...	...	Hon. Secretary's (Mr. Cook) Expenses	...	11	11	3
	...	...	...	...	Balance in the Bank	...	...	...	...
Arrears (good) to come in	...	...	5	15			124	7	1
	...	...	6	6					

Audited and found correct,

ROBT. M. CAPON.
KENNETH COOK.

PROCEEDINGS

OF THE

LIVERPOOL

LITERARY AND PHILOSOPHICAL SOCIETY.

ONE HUNDRED AND SECOND SESSION, 1912-13.

ROYAL INSTITUTION, LIVERPOOL.

ANNUAL MEETING.

The Annual Meeting of the Society was held at the George Holt Physics Laboratory of the University of Liverpool on Monday, 14th October, 1912.

Professor Lionel R. Wilberforce, M.A., President, occupied the chair.

The Hon. Treasurer's Accounts, and the following Report of the retiring Council, which had been printed and circulated, were duly adopted:—

REPORT OF THE COUNCIL.

This report, dealing with facts and events affecting our Society at its centenary period, will doubtless be of special interest to its present members, and possibly may hereafter be found useful for reference by any that in years to come have to deal with the history and methods of the Society, or prepare its future celebrations.

Reference to your Council's preceding Report (1910-11) will show that steps were timely taken in preparing the way for an adequate commemoration of our hundredth

Anniversary, and we are now in a position to congratulate our fellow-members on the success with which all the schemes then devised have been carried out during the period under review. That success has been its own sufficient reward to all who wrought for it on the Council, the Recess Committee, and the Ladies' Committee, and it must be the Society's earnest endeavour to maintain and improve during ensuing sessions the vantage ground secured by last year's earnest labours and the co-operation of many devoted supporters.

The Membership has again increased. At the end of the Session there were 39 Honorary, 4 Life, 85 Ordinary, and 39 Associate Members; in all, 167. The increase on the previous year (after allowing for deaths and withdrawals) being mainly due to the election of 25 new Honorary and 29 Associate Members. Your Council gladly recognize in the large increase of the Associates how effective has been the work of the Ladies' Committee, 25 of the 29 being ladies. What the Society still greatly needs is an accession of Ordinary Members, for whilst recognizing the fact that these have so increased in three years as to more than replace the extraordinary losses from deaths and removals, your Council cannot but feel much greater increase is possible, and may be hopefully attempted.

The attendance at Ordinary Meetings reached the highest figures yet recorded; a lecture-programme of exceptional interest, and three reception-evenings during the Session having contributed to this result. At the Banquet, 165 attended. At the nine Ordinary Meetings the average numbers present were 117.

The Receptions held on the inaugural evening, the ladies' evening, and the evening of our welcome to the other learned societies of the city were greatly enjoyed.

The numbers present, however, only averaged 123, so that in view of the large number of invitations issued, and the expense incurred to make these Receptions very attractive, your Council confess to some disappointment of their anticipations. They recommend, however, that during the next Session or two one such Reception should be held, and take the character of a ladies' evening, lady members giving the papers on such occasions, and the ladies' committee undertaking the management.

The presentation to Mr. J. Hampden Jackson, of his portrait, a work of great artistic merit, and an admirable likeness, as a token of affection and esteem from his fellow members, is an event that requires special mention; and the Committee desires to record its conviction that the harmony, good-will, and cheerful self-sacrifice that characterised the proceedings of the Centennial sub-committees was in the main due to the contagious enthusiasm, unflagging zeal, and wise prevision of Mr. Jackson, whose inspiration rendered their labours fruitful, and secured for the Society the brilliant success that attended the celebration of its centenary.

In the "Commemorative scheme" referred to on page xxv, vol. 62, it was stated that, by the devoted labour of Mr. Alfred W. Newton, the whole of the 62 volumes of *Proceedings* had been indexed. This Index has now been printed, and can be supplied to members at the nominal charge of 1s. per copy. So carefully has the work been done, every paper being separately indexed under its subject, and again under its author's name, that the reader will now have no difficulty in finding what he wants. This is a work that has long been wanted, and the Society is to be congratulated on its successful completion.

The Centennial Banquet proceedings have already been

reported verbatim in the Society's yearly volume (No. LXII), and need not be further alluded to, but your Council take the opportunity to express the Society's warm indebtedness to its accomplished President, Rev. Edmund A. Wesley, M.A., and to Mrs. Wesley, both of whom, by their genial and hearty co-operation with us, and graceful discharge of so many social functions throughout the year, have left with us all most pleasant memories of their successful year of office. To the President we are especially indebted for the fine address with which he inaugurated the centenary year, and the admirable conduct of our leading function—the Banquet.

Your Council recognize gratefully the warm co-operation of many old members of the Society who came forward in answer to their circular to assist the centennial objects. In the sessional programme of lectures, the speech-list at the Banquet, the number of tickets taken up, and the gifts to the special fund, these former members gave hearty proof of abiding attachment to the "Lit. and Phil.," and love for those memories awakened by its name. Extracts from the letters circulated on the centenary evening will long remain the reminder to us and our successors of those on the old roll who survived in 1912 to give warm filial testimony of their regard for the Society.

We have lost since last year, by death, two distinguished honorary members: Sir Joseph Dalton Hooker and Bishop Stubbs of Truro. Also our ex-President, Mr. Richard Steel, and our old and steadfast supporter, Mr. Alfred Holt. Among former members of the Society, who have passed away we regret to record Mr. Thomas Gibson, Mr. Henry Young, and Mr. Thomas Snape.

Since the close of the Session your Council has been successful in finding the surviving descendants of Doctor

Thomas Stewart Traill, that gifted and public-spirited citizen of Liverpool, with whom the idea of forming this Society originated, and under whose most energetic and self-sacrificing efforts for its first 32 years it flourished and became established permanently as the leading learned institution of the city. Professor Traill's two sons both died unmarried, but one of his three daughters (Mrs. Omond) has left a son whose name will not only confer distinction on our honorary list, but worthily remind the Society of its obligation to the grandfather so illustrious in its annals. Your Council recommend, therefore, that Professor Robert Traill Omond be offered honorary membership, in grateful remembrance of our first founder, Dr. Traill.

The Roll of the Society, brought up to date, will next Session be re-established, and Mr. W. J. B. Ashley, at the invitation of the Council, has kindly undertaken the duties of Keeper of the Roll.

The Records of the Society, now suitably preserved, have by your Council been entrusted to the special custody and oversight of their colleague, Mr. J. Hampden Jackson, who has accepted this responsibility by their unanimous request. It is suggested that the occupants of these new offices in the Society shall yearly present a written report on their duties at the last meeting of the Session.

Mrs. J. S. Cooper was elected an Ordinary Member of the Society, and Prof. Robert Traill Omond, F.R.S.E., an Honorary Member.

Officers for the Session were then elected, by ballot, as follows:—Vice-President—Rev. Edward Hicks, D.D., D.C.L. Hon. Treasurer—Lt.-Col. J. Maxwell McMaster, V.D. Hon. Secretary—Mr. Kenneth Cook, F.C.A. Hon. Librarian—Mr. Alfred W. Newton, M.A.

The following members were elected to serve on the Council in place of three retiring members:—Mr. George H. Morton, Mr. Robert M. Capon, L.D.S., and Dr. Nathan Raw, and the following were re-appointed, by ballot, to serve thereon:—Mr. J. W. Thompson, Mr. James Mellor, Mrs. Sephton, Mr. Roland J. A. Shelley, Mrs. Foard, Mr. Bertram B. Benas, and Mr. W. J. B. Ashley.

On the motion of Dr. William Carter, seconded by Mr. T. L. Dodds, a hearty vote of thanks was accorded to the retiring President, Rev. Edmund A. Wesley, for his devoted services to the Society during its Centennial Session.

The President, Professor Wilberforce, M.A., then delivered his Inaugural Address, illustrating his subject, "Colour Vision," with many most interesting experiments.

ORDINARY MEETINGS.

II. 28th October, 1912. The President, Professor L. R. Wilberforce, M.A., occupied the chair. Mr. John Mellor was elected a Life Member of the Society. Mr. Thomas L. Dodds, J.P., read a paper entitled "Jonathan Swift."

III. 11th November, 1912. The President occupied the chair. A letter was read from Professor Robert Traill Omond accepting the Honorary Membership of the Society. Miss Edith A. Blakiston, and Mr. Garfield Warrington were duly elected Members. Rev. Dr. Hicks read a paper entitled "Some Facts and Legends of Iona, the Isle of Columba."

IV. 25th November, 1912. The President occupied the chair and introduced Professor R. J. Harvey Gibson (Dean of the Faculty of Science, University of Liverpool), an old member of this Society, who read a paper on "Trees of the British Isles," admirably illustrated by lantern slides. Rev. F. Linstead Downham was duly elected a member of the Society.

V. 9th December, 1912. The President occupied the chair. On the recommendation of the Council, the Rev. John Sephton, M.A., was unanimously elected an Honorary Member of the Society in recognition of his services, and the long period (46 years) that he had been a member of the Society. The President announced with regret the death of Mr. Joseph Gardner, J.P., a member of the Society. The evening was devoted to short communications, Dr. W. H. Broad giving an interesting account of the difference between the skulls of the lowest type of man and the highest form of ape, and referring to the recent discovery in Sussex of a female skull of very exceptional

antiquity. Dr. A. E. Hawkes gave an account of certain animal bones found years ago in the cave near Dyserth, North Wales. Mr. George H. Morton read a note upon the difference of the Primary Colours from the Physicists' and the Painters' point of view.

VI. 27th January, 1913. The President in the chair. Mrs. James T. Foard read a paper entitled "A Criticism on the Work of the late Professor Cesare Lombroso (of Turin): *La Donna Delinquente e la Donna Normale*," and it was mentioned by the President that Mrs. Foard had assisted in the collection of information for Professor Lombroso during his studies of criminology,

VII. 10th February, 1913. The President occupied the chair, and called the attention of the Society to the deplorable loss it had sustained by the deaths of Dr. William Carter (President of the Society in 1885 and 1886; and a member of 41 years standing) and of Dr. Charles Lee (who joined the Society in 1901, and had prepared a paper for next month's syllabus). The President further referred to the national calamity (just announced) of the death of Captain Scott, and three others of his brave party on their Antarctic journey of discovery. Dr. Nathan Raw then read a paper entitled "Modern Methods of Living and their influence on Public Health."

VIII. 24th February, 1913. The President occupied the chair, and alluded with regret to the death of the Earl of Crawford, an honorary member since 1877. Professor Alexander W. Mair, M.A. (of the University of Liverpool) then read a paper of exceptional interest on "Illusions and Hallucinations."

IX. 10th March, 1913. Rev. Dr. Edward Hicks (Vice-President) occupied the chair. It was intimated that the Hon. Secretary, Mr. Kenneth Cook, had expressed his desire to be relieved of his official duties, and Mr. Hampden

Jackson undertook to act in his absence. The resignation of Mrs. R. Shadbolt, an Associate of the Society, was received and noted. The Vice-President having left the chair, the chair was taken by the Rev. E. A. Wesley, M.A., who proposed the Rev. Edward Hicks, D.D., D.C.L., as President of the Society for the next session. This being seconded by Mr. T. L. Dodds, was unanimously carried. The evening was devoted to a discussion upon the New Literature of 1912. The Rev. E. A. Wesley reviewed the and literary and poetical work of Mr. Lascelles Abercrombie, Professor Oliver Elton's volumes on *English Literature of the Period 1780-1830*. Mr. T. L. Dodds dealt very interestingly with Mr. R. W. Livingstone's book *The Greek Genius and its Meaning to us*, and Sir George O. Trevelyan's volume on *George III and Charles Fox*: and the Rev. Dr. Hicks summed up the evening's discussion with a short and admirable review of the ground gone over by the successive speakers.

X. 17th March, 1913. The President occupied the chair. The evening was devoted to the Sessional Report of the Keeper of the Records, and Mr. J. Hampden Jackson, in an interesting address, presented to the Society his completed and indexed volumes of the Society's Centenary Roll (1812-1912), from which might now be gathered at any time full particulars of the 1,643 Members and Associates enrolled during its first hundred years. The President, in conveying to Mr. Jackson the thanks of the Society, assured him that in years to come this Roll would always be honorably associated with his name, and would become a standard work of reference for writers having to deal with Liverpool and its history.

MEMBERS ELECTED DURING THE SESSION.

Mrs. J. S. Cooper, Professor R. T. Omond (Hon.

Member), Miss Edith M. Blakiston, Mr. Garfield Warrington, Rev. F. Linstead Downham, Rev. John Sephton (Hon. Member).

The attendances at meetings during the Session were:—
Annual Meeting, 65 ; Ordinary Meetings, 53, 59, 61, 45, 31, 54, 59, 38, 26.

ONE HUNDRED AND THIRD SESSION, 1913-14.

ROYAL INSTITUTION, LIVERPOOL.

ANNUAL MEETING.

The Annual Meeting of the Society was held on Monday, the 13th October, 1913. The retiring President, Professor L. R. Wilberforce, M.A., in the chair. After sympathetic reference to the death of Professor Francis Gotch, formerly an active member of the Society, the President called upon the Hon. Treasurer, who presented his Accounts (duly audited), shewing a balance to the credit of the Society. These, together with the Report of the Council placed in each member's hands, were then duly adopted.

REPORT OF THE COUNCIL.

The One Hundred and Second Session of the Society (1912-13), though comparatively uneventful—as following our Centenary Year—was not without some degree of exceptional interest. It was presided over by Professor Lionel R. Wilberforce, M.A., whose constant diligence in all duties of the Chair, and whose participation in our discussions were of much advantage to the Society.

The papers read during the session well sustained its best traditions. The two evenings devoted to discussion of selected scientific and literary topics are considered by your Council to have been successful; it is intended, therefore, to continue following this precedent, which has been re-established after long disuse. At the close of the

session, the Keeper of the Records (Mr. J. Hampden Jackson) presented to the Society the completed Centenary Roll of its membership for 1812-1912, these volumes now constituting a valuable addition to our archives.

The membership has been fairly well sustained, the session closing with a roll of 70 Ordinary, and 37 Honorary Members, and 33 Associates. Attendances at the meetings, though not so large as in the Centenary Year, were well up to the averages of previous sessions, viz., 55 per meeting.

The death occurred during this year of the Society's oldest Honorary Member, Lord Avebury (elected at the time of the British Association's Meetings at Liverpool in 1870). His notable services in several departments of science, his literary gifts, and public spirit alike, have earned for him lasting distinction, and our Society recalls with pleasure his eloquent address at its Banquet of 8th February, 1906, under the Presidency of Mr. A. Theodore Brown. Another very distinguished Honorary Member has passed away in the person of the Earl of Crawford and Balcarres (elected in 1877); and a third in our Society's warm and constant supporter, Dr. William Carter, who joined the membership in 1872, and was our President in the years, 1885 and 1886. We have sustained still further losses by the deaths of Mr. Joseph Gardner, J.P., Dr. Charles G. Lee, Mr. Thomas D. Philip, Mrs. Narramore and Mr. William Oulton, J.P.

Dr. Lee's twelve years membership, his interesting papers, and his genial personality, will long be held in memory with us. Mr. Philip's steady and close attachment to the Society (to which he was a subscribing member for 52 years, attending its meetings regularly for nearly 40 years), will be sadly missed. The sudden decease of Mrs. Narramore, wife of our former Secretary

(Mr. E. G. Narramore), whose frequent presence at our gatherings of the last ten years we so well remember, has deeply affected us all. Alderman William Oulton, who was Lord Mayor of Liverpool in 1898, and whose services to the City in Educational matters were very considerable, extending over 40 years, was a member with us from 1885 to the time of his death, 27th September, 1913.

The condition of the Society's stock of volumes of its past "Proceedings" has been brought before your Council by the Honorary Librarian, many years' numbers being almost or altogether exhausted, whilst for other years there remains an inconvenient accumulation of copies. We are accordingly taking steps to reduce surplusage, and collect (by donations if we can) copies of those books run out of stock. In this latter effort we hope members will give us all the assistance they can.

Guided by the wish to simplify and adapt the Society's Laws more thoroughly to present day conditions, we are submitting for adoption a body of new Laws that we hope will better serve the Society's purposes.

In the preparation of this, and much other business for the approaching session, your Council has had the assistance of a recess Sub-Committee, and tenders its cordial thanks to the President and Vice-President, and to Messrs. Jackson, McMaster, Newton, Narramore, Capon, Bertram Benas, and Cook for their valuable co-operation on this Sub-Committee. As in previous years, a circular has been prepared and sent out (to selected addresses) asking for new members to enrol.

Your Council cannot close their report without allusion to the valuable and efficient services rendered to the Society for the last four years by Mr. Kenneth Cook, F.C.A., for which, especially in the Centenary year, it has been so much indebted. With regret we have received his

resignation of office, on the ground of growing demands upon his professional time, and Mr. William J. B. Ashley has kindly consented to act in his stead until the Annual Meeting, when he will be proposed for election.

The thanks of the Society were then cordially voted to Mr. Kenneth Cook, A.C.A., for his four years' enthusiastic work as Honorary Secretary, and that gentleman briefly replied, acknowledging the valuable co-operation that had been afforded him by members of the Council.

On the motion of the Rev. Edmund A. Wesley, M.A., seconded by Dr. J. Ernest Nevins, the hearty thanks of the Society were given to Professor L. R. Wilberforce, M.A., for his valuable services as President during the past session, and for his constant devotion to the Society's interests during his period of office. Professor Wilberforce, having suitably replied, introduced the new President, Rev. Edward Hicks, D.D., D.C.L., to the chair, who then delivered his Inaugural Address, entitled, "The Outlook in Thought and Culture." A resolution of thanks to the President for his interesting paper was moved by Rev. W. E. Sims, A.K.C.L., seconded by Rev. I. Raffalovich, and carried with cordial acclamation.

Officers for the session were then duly elected as follows:—Vice-President—Mr. George Henry Morton. Hon. Treasurer—Lt. Col. J. M. McMaster, V.D. Hon. Secretary—Mr. W. J. B. Ashley. Hon. Librarian—Mr. Alfred W. Newton, M.A. Keeper of the Records—Mr. J. Hampden Jackson.

The following members were elected to serve on the Council in place of three retiring members:—Mr. E. G. Narramore, L.D.S., Mr. Kenneth Cook, A.C.A., and Mr. Harry Winter, and the following were re-elected to serve thereon:—Mr. James Mellor, Mr. J. W. Thompson, B.A.,

Mrs. Sephton, Mr. R. J. A. Shelley, Mr. B. B. Benas, B.A., LL.B., Mr. R. M. Capon, L.D.S., and Dr. Nathan Raw.

Eight new members of the Society were then balloted for and duly elected (see list of names on a subsequent page).

In accordance with the Report of the Council, the New Laws drawn up by them, and recommended for adoption by the Society, were then considered, and Lt. Col. McMaster, having explained fully the nature of the changes proposed to be made, it was moved by the President, seconded by Mr. Jackson, and unanimously resolved that these Laws be adopted by the Society in substitution for the existing Laws. This Resolution to come up for confirmation at a further (special) Meeting of the Society.

ORDINARY MEETINGS.

II. 29th October, 1913. The President (Rev. Edward Hicks, D.D., D.C.L.), occupied the chair. News was received of the lamented death of Mr. J. C. Redish, a life member of the Society, who joined it first in the year 1851, and was at one time its Hon. Secretary. The President then introduced to the meeting the Lord Mayor Designate, Herbert R. Rathbone, Esq., who read to the Society a paper entitled "Abraham Lincoln." After the address the cordial thanks of the meeting were moved, seconded and unanimously passed to Mr. Rathbone for his very interesting paper, the proposer (Mr. Jackson) pointing out that Mr. Rathbone's father and two of his uncles had been members of the Society, whilst his grandfather (William Rathbone) and great uncle (Richard Rathbone) had been among its original founders in 1812. The lecturer replied

in very congratulatory terms. Following on this meeting, an Extraordinary Meeting of the Society was held, when the proposed alteration of the Laws of the Society which were approved at the Annual Meeting, on the 13th instant, were considered for the second time, and it was moved by the President (Dr. Hicks), seconded by Mr. J. H. Jackson, "That the Laws as revised and approved by the Council be adopted as the Laws of the Society in substitution for the existing Laws." On putting this resolution to the vote, it was then declared by the President to have been carried unanimously.

III. 10th November, 1913. The Vice-President (Mr. George H. Morton) occupied the chair. The following resolution was on his proposition, after being seconded by Rev. E. A. Wesley, M.A., passed in silence, the members rising to their feet: "That this Society records with profound respect its sense of, and admiration for, the long and brilliant services to science of the late Dr. Alfred Russel Wallace, O.M., whose achievements in original research, and rich contributions to philosophical literature, must ever entitle his name to a foremost place among this country's distinguished men." The President (Dr. Hicks) was then desired to forward a copy of the resolution to the surviving representatives of Dr. Wallace. Mr. Bertram B. Benas, B.A., LL.B., read a paper entitled "The Methods of Law: a review of the Phenomena of Comparative Jurisprudence."

IV. 24th November, 1913. The President (Rev. Dr. Hicks) occupied the chair. Miss Dora McRae Window was duly elected a member, and introduced by the President to the meeting. Dr. William H. Broad, M.D., B.S., Lecturer on Physical Anthropology, University of Liverpool, then read a paper entitled "Pre-historic Man, in the light of recent Discoveries," illustrating this important subject by

a number of casts of skulls, as well as drawings and diagrams.

V. 8th December, 1913. The President occupied the chair, and referred briefly to the loss sustained by science in the death of Sir Robert Stawell Ball (Astronomer Royal) the most popular lecturer of his day, who had made Astronomy both intelligible and interesting to great numbers of his countrymen. It was recalled with pleasure that at our Society's Public Banquet in the year 1900, Sir Robert had been its chief guest, and had greatly added to the enjoyment of the occasion by his merry wit and admirable gifts as an after-dinner speaker. Mr. J. Hampden Jackson read a communication entitled "The Law Codes and Priestly Jurisdictions of Ancient Faiths," Mr. Harry Winter afterwards reading a paper upon the "Poet Laureate-ship and the new Poet Laureate" (Dr. Robert Bridges). Dr. Alfred E. Hawkes exhibited a chart shewing the geological order of sequence in strata, and an interesting picture shewing the appearance presented by bone deposits of a remote age when discovered in caves.

VI. 26th January, 1914. Rev. E. A. Wesley, M.A. (in the absence of the President) occupied the chair. Mr. Richard R. Howroyd, B.Sc., read a paper entitled "George Meredith."

VII. 9th February, 1914. Rev. E. A. Wesley, M.A. (in the absence of Dr. Hicks), again occupying the chair. Much regret was expressed and sympathy felt for the esteemed President of the Society in his present failure of health, and cordial desires entertained for his speedy and complete recovery. The Society received with sincere and deep regret the intimation that, since its last meeting, there had passed away Mr. Henry Jevons, the oldest surviving member of the Society (who joined it in 1847),

Professor Robert Traill Omond (Hon. Member), the son-in-law of Dr. Traill, founder of the Society, Mr. Baron L. Benas, J.P., a member ever since 1866 and President of the Society in the years 1890 and 1891, and Dr. John Murray Moore, M.R.C.S., F.R.G.S., who was its President in 1900. Rev. K. E. Khodadad, B.A., read a paper entitled "A Review of the Literature of Persia."

VIII. 23rd February, 1914. The Vice-President (Mr. George H. Morton) occupied the chair. Mr. Robert Stanley Capon, B.A., of St. John's College, Oxford, a visitor to the Society, delivered to it a very interesting illustrated lecture entitled "Some modern problems of Astronomy," confining his remarks to the domain of Solar Research. The President of the Liverpool Astronomical Society (Mr. W. E. Plummer, F.R.A.S.) being present by invitation, was invited by the Chairman to address the members, and moved the vote of thanks to Mr. Capon, which, being seconded by Rev. Canon Lancelot, M.A. (an Hon. Member), was passed with acclamation.

IX. 2nd March, 1914. The Vice-President (Mr. G. H. Morton) occupied the chair. Mr. J. Hampden Jackson F.R.G.S., Keeper of the Society's Records, delivered his Annual Report, exhibiting the boxes and their contents (in accordance with the Laws). The steps taken by the Hon. Librarian (Mr. A. W. Newton, M.A.), with the Councils' approval, to protect and consolidate the Society's copies of its series of *Proceedings*, and reduce the accumulation of redundant copies were spoken of with cordial appreciation. Attention was drawn to the fact that several large volumes of the Society's correspondence in past years were missing from the Records, these being of considerable value to the Society. Mr. Jackson reported the addition of over 200 portraits to the Centenary Roll, and asked cooperation from the members in extending this collection so

usefully illustrating their records. He then handed to the Vice-President, on behalf of the Society, the following completed documents upon whose preparation he had during the last few years bestowed much labour and research :—

1. A list of the Society's unprinted Papers (1812 to 1912).
2. A list of the "Communications" and Exhibits made to the Society (1812 to 1912).
3. An Author-index combining these two lists with the list of the Printed Papers published in 1912 as a "Centenary Index" (and prepared by Mr. A. W. Newton, the Hon. Librarian).

On behalf of the Society, the Vice-President cordially thanked Mr. Jackson for these valuable compilations upon which he had bestowed such great diligence and labour, and expressed the feelings of the members that they should be very carefully preserved with a view to being printed when the funds of the Society might allow.

X. 9th March, 1914. The President (Rev. Dr. Hicks) occupied the chair, and was cordially congratulated by the members upon his restoration to health. He alluded with sympathy to the death of the Society's former distinguished President, the Rev. Christian David Ginsburg, LL D., J.P., one of the most learned Philologists and Hebrew Scholars of our time, a member of this Society since the year 1861, and to whom eloquent reference had been made by Sir Dyce Duckworth at our Centennial Banquet. The recent valuable present made by Dr. Ginsburg to the Society's Library was referred to, and by invitation of the President, Mr Jackson spoke of pleasant recollections of the deceased ex-President; and Rev. K. E. Khodadad, B.A., of Dr. Ginsburg's great intellectual power and distinction as the leading Hebraist of his time. Professor Benjamin Moore, M.A., D.Sc., F.R.S. (of the Chair of Bio-Chemistry in the

University of Liverpool) delivered a highly interesting address to the Society upon "The Unity of Inorganic and Organic Evolution," illustrating his subject by experiments.

XI. 23rd March, 1914. The President occupied the chair. Mr. George H. Morton was unanimously elected to be the President of the Society for next Session. Mr. Alfred W. Newton, M.A., read a communication to the meeting respecting the actual Liverpool birthplace of the poet Arthur Hugh Clough. The President in opening the very interesting discussion of the evening upon "The new Literature of 1913" spoke of the "Trend of Thought" in the Fiction, and the Sociological, Theological and other publications of the period; including *Belles Lettres and Travel*. He was followed by Rev. W. E. Sims, A.K.C.L., who read a highly interesting communication in regard to the poet Francis H. Thompson, and the value of adversity in the career of Letters. Rev. F. Linstead Downham, A.K.C., read two very interesting communications upon recent books entitled *The Life of John Bright*, and *A Memoir of Primate Alexander*.

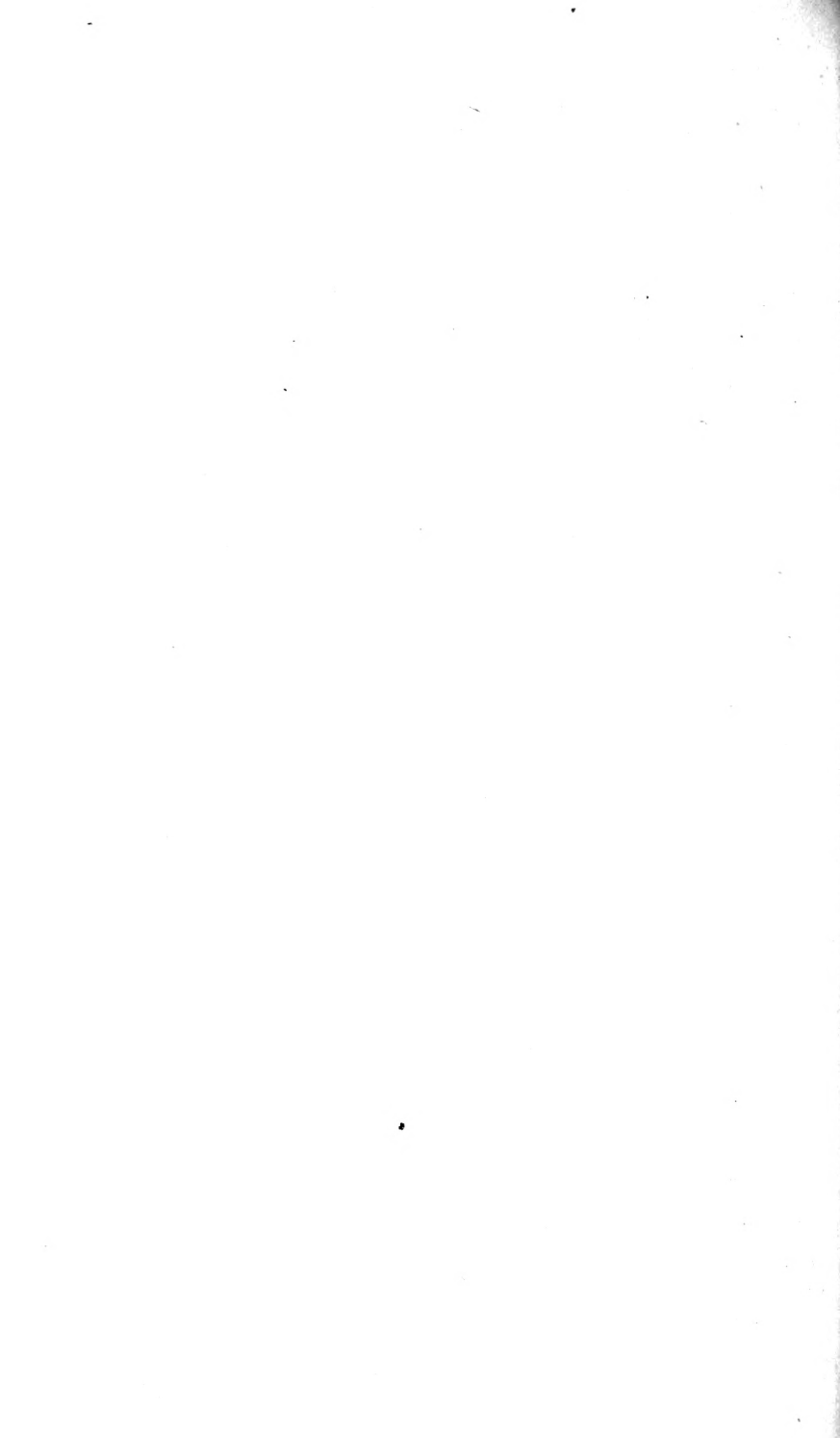
NOTE.

(*Professor Wilberforce's Inaugural Address.*)

The Council regrets that, owing to the largely illustrative nature of Professor Lionel R. Wilberforce's inaugural address—his subject being "Colour Vision," and its delivery accompanied with many interesting and beautiful experiments—it is found impracticable to follow the Society's usual course and add the lecture here to the records.

With like regret, and for the like reason, the Council has found itself precluded from publishing in recent volumes of *Proceedings* the following valuable lectures of Professor Wilberforce to the Society, all of which were delivered in the Physics Theatre at the University of Liverpool on his courteous invitation to our members:—

- 1902. March 24. On Pendulums.
- 1908. February 24. On Spinning Tops and Gyrostats.
- 1911. January 23. On Vibrations and Waves.



PAPERS READ DURING
THE 102ND AND 103RD SESSIONS.



THE CRIMINAL AND NORMAL WOMAN.

By MRS. J. T. FOARD.

THIS evening I shall hope to place before you a few short sketches of the work of my lamented friend, the late Professor Lombroso of Turin. The researches he made on the normal and criminal woman were most interesting, both in their measurements and their particular anthropological characteristics. Holding an appointment as Professor of Psychiatry in the University of Turin, and having free access to the prison there, he had ample matter to work upon. In England no research of the kind is permitted, so that criminology as a science has been greatly neglected. Bertillon's tests (finger marks) are about the only scientific facts allowed to be noted, and very useful they have been. In asking you to follow me this evening in these researches, I must admit, and you will doubtless do the same, that we are all getting rather tired of the "eternal feminine," but when we consider her from a scientific point of view, it is surprising how interesting she becomes. Her different types, her classification, the proofs of facts that are shown to be existent, all arrest our attention, and give the subject a novel zest. There is a great deal said now about the necessity of sex equality, and on the importance of the changes its establishment would make in every class of society, and in the Government itself. But those who advocate this matter are quite biologically wrong. In the first place, woman is a different creation altogether; she is less in stature than man, in

weight, in respiration and respiratory capacity, in the weight of the viscera and the brain. This, however, does not prove she is not as clever, as it is not altogether the weight of the brain, so much as the depth and number of the convolutions.

Professor Lombroso divided his types into the criminal born, and the criminal of occasion. He found differences between them in the capacity of the skull, in the orbital measurements; the horizontal circumference and curve, in the facial index; and the weight and size of the jaw. Among women of the first division there was a strong tendency to atavism. The female criminal of occasion had an inferior cranial capacity with many regressive features. She frequently entered the ranks of criminality from the heredity of a tainted ancestry, such as insanity or alcoholism. The normal woman has much more stability of purpose as well as self-control. Her reflective powers are more developed, she can see cause and effect, which criminals do not. It is this defect that gives them away sooner or later. Lombroso considered the most important measurements were those that gave the capacity and orbital width of the skull, and the weight and diameter of the mandibole.

With regard to the nature of the crimes, the largest horizontal circumference was found in the homicide, after which, the poisoner, the infanticide, and the thief. There are often marked physical peculiarities among criminal women that are absent in the normal altogether.

There is a certain assymetry of face, marked wrinkles, and often eyes deeply set. The expression: "What a criminal-looking person!" is founded on fact, as people who give these cranial and orbital measurements, with a tendency to prognathism, are not very pleasant to look upon.

The female criminal born is usually masculine of aspect, cruel and revengeful, very avaricious, parsimonious, and, at times, sentimental. Those of occasion and passion have a marked degenerative character. There is also some virility about them. They are fond of alcohol, their maternal and protective instincts are weak. They have a passion for change, and nothing they dislike more than consecutive employment. They also have an overwhelming vanity, great volubility, and most marked untruthfulness; moral sense very low. The degenerate is purely the outcome of atavism and a tainted ancestry.

We may take it for granted, as scientists have pointed out by statistics, that both criminal and immoral women are the victims of arrested brain development. These facts open out a large field of discussion to the philanthropic, who consider that crimes are caused from a bad environment. Craniometry proves that nothing very satisfactory can be turned out minus brain. Poisoning is one of the most frequent forms of crime among women. It can be done quietly without noise, and the perpetrator generally imagines she will never be discovered.

Lucrezia Borgia was one of the worst offenders in this respect, as her victims were numerous, even to her own daughter, of whom she became jealous. In France, in the seventeenth century, there was an epidemic of poisoning among the women of the aristocracy. The King was constrained to make a special Tribunal to take only these cases, and it caused so much dissatisfaction, that a deep plot was laid to poison him. Ottolenghi gives some cases:—Menghini, an Italian woman, twenty years of age, married against her will, killed her husband with a hatchet whilst he was asleep. She had very large ears, enormous development of the lower part of the face, very black hair, large canine teeth, with

small incisors. Another, a peasant, fifty years of age, murdered her brother, and denied it altogether, but was condemned to twenty years penal servitude. She had a cleft palate, deep wrinkles, thin lips, and facial assymetry. Another, thirty-six years old, who came of a rich family, poisoned her husband with arsenic, after sixteen years of marriage. Mandibole large, cross eyed, weak left reflex. She confessed nothing, and was very determined. Another, aged sixty-four, poisoned her daughter-in-law and her mother; very marked wrinkles, thin lips and a cleft palate.

Another, a peasant of forty-seven, poisoned her daughter-in-law because she was unable to work; she never confessed, but made many excuses. Cross-eyed, very large canines, and a great depression of parietal occipital. Her son and grandfather were epileptic. The Darwinian tubercle enormously developed. Lombroso considered that infanticides show a special type. Many criminal women are much more brutal than men, and infinitely more treacherous. One of their very strong characteristics is that of revenge. The psychic centre is often in a state of excitement, and the slightest re-action produces most disproportionate effects. They are not so sudden in their revengeful impulses as men, but take days, weeks, months even, in arranging their plans for the destruction of their victims. Wounded vanity, jealousy of another woman, who has attracted their husbands or lovers, is one of their strongest motives, and is quite falsely styled—"love." There is no sentiment of the kind in it, simply and absolutely a furious state of egotism.

Self is the moving power, and perhaps one of the most striking traits of the immoral and criminal woman, is her intense selfishness. It is the point on which all her

actions turn. Altruism and sympathy are never found. Intense egotism is the attribute of the beast, and has an atavistic origin. Besides revenge there is often a great greed of gold. The meretricious Bompard instigated Eyraud to murder a wealthy old man in the hope of booty. Criminal woman often commits crimes from a parsimonious motive, as Madame Gitana, who poisoned her daughter to inherit a sum of money; while another caused the death of her son because he cost her too much, and increased the household expenses.

The relative value of muscular force of strength of man, as compared with woman, is given in a tabulated form by Qiuatélet from the dinamometer. At nine years of age the boy can pull with two hands 29 kilogrammes; the girl, 15·5. At 14 the boy, 47·9; the girl, 33·4. At 21 the boy, 84·3; the girl, 45·2. At 25 the man, 88·7; the woman 50. These markings remain much the same till the age of 50, when the man pulls 74, the woman 47. In a hundred infanticides they showed a muscular force at the dinamometer of 30 kilogrammes with the right hand. In poisoners there was a marked left-handedness. Weak reflex action is frequently to be observed in criminals, and Tarnówsky made observations on these facts.

Ottolenghi and Lombroso came to the conclusion, from cranial measurements, that women of bad character had a smaller cranial capacity than criminals or normal women. Both the maximum horizontal circumference and the minimum are inferior to that of the criminal. The longitudinal and transverse curve is much smaller. All tendency to crimes of violence either in man or woman are characterised by very large ears, with the lower part of the face unduly developed, with a retreating forehead, and a disproportion in the facial angle, which is peculiar to savages and monkeys. The hands are often very large.

If you remember in *Great Expectations*, by Charles Dickens, when Pip was dining with the lawyer Jaggers, he made his housekeeper, who was waiting at table, show him her hands. She was a murderess who had been got off by the legal ingenuity of Jaggers, and who had taken her on as a servant since. This was written when criminology was a comparatively unknown science. The female criminal, from her very small brain, weakness of inhibitory power, cannot resist the temptation of thieving or poisoning her enemy when placed in circumstances which give rise to the occasion. It is the criminal of occasion that fills our prisons; and the weak, vain, and shallow, with instability of character, fill the ranks of unfortunate women.

So many are handicapped by a tainted heredity, and the nerve degeneration consequent upon alcoholism. These factors combined produce the "out-of-works." In the better classes of life these failures are greatly minimised by monetary support from their relations, which probably prevents their sinking into the lowest depths; therefore we must feel that environment does reduce the opportunities of crime, although such people will most probably remain among the "submerged tenth." The maternal instinct is curiously deficient in both these types. A woman inspector on the "Infant Life Protection Act," told me what struck her most, among the mothers of the illegitimate children she was necessarily brought in contact with, was their great callousness with regard to their infants. Their whole wish seemed to be how soon they could get them what they call "adopted," and would willingly surrender every link with them, so as they could be rid of an unwelcome responsibility. The criminal is known by great love of change, violent likes and dislikes, and an intolerable antipathy to make any arrangements

for the future. The present, and that alone, with the gratification of every extravagance, and selfish passion, are all that occupy her thoughts and attention.

The criminal born frequently manifests great cuteness and precocity in childhood. Many women when they commit a crime feel the need of speaking about it, the secret weighs heavily on them in times of solitude. L'Agü, who poisoned the wife of her lover Rogier, said: "How terrible for a young man to have to live with a wife that he hates." Another, who was told that her victim would get better—that it was only a slight indisposition—answered: "She will die be certain, no one can cure her of this complaint." A very curious mode of confession among criminal women is that to a lover, they frequently make him the confidant of their crimes, but as soon as their infatuation is over, and they become tired of him, they regret having done so. Ferrero mentions a woman of the name of Petala, who confessed in writing to her lover she had poisoned her husband. When he abandoned her, she determined to assassinate him, to rid herself of a perilous confidant. Many men in historical times have been the victims of such circumstances. With the criminal woman, as I have shown you, self is the moving power, she knows no such feelings as sacrifice or altruism. Her moral sense is altogether perverted; she looks upon the gravest delinquencies as small matters of no importance, and, as a rule, she has no compunction in denouncing her accomplice, if she has one. Her leading characteristics show strong tendency to regression and atavism. The weakness of the maternal instinct, the love of dissipation, her exaggerated inclination for revenge and cruelty, all point to the strongest recidivism. "Bell Star," a brigandess, who was a terror to all in Texas, one day dressing as a man, the other as a woman, was one of the

most desperate female outlaws. A woman of the same type commenced to rob her father at twelve years of age, in order to have money to spend with her companions. The criminal of occasion is opposed in some points to the "criminal born;" is more vivacious than the normal woman; she is violent in her attachments, is often intolerant of the rules of conventionality, and has a fatal tendency to cast in her lot with very bad men. They are not so much affected by money as men, infanticide and revenge being the highest percentage of their crimes. Curiously, many have a certain kind of religious sentiment. One, who poisoned her husband, wrote in a letter to her lover: "He was ill yesterday, I think God has commenced his work." Maria Forlini, who strangled a child in order to be revenged on its parents, wrote in a letter to her lawyer: "Death is nothing if one only saves the soul. If this is done, nothing else matters."

Writers have found that in both the criminal of occasion and a certain percentage of normal women, there is a marked leaning to mediocrity, they seem to resent progress. The employers of women in large factories said, when they were consulted about the matter, that they found them more industrious, but not so intelligent as men. They are much more sensitive to imitation, and a certain kind of intuition. Among those of the *nouveaux riches*, who have to be taught the manners and customs of society, it has been found that the lady, under skilful tutelage, soon comes into line and to the manner born, but the man is more difficult, and will take his fish fork for meat, and call his guests "sir."

In whatever profession or work in the province of man women undertake, there will always be the probability of their throwing it up in order to marry. Strong as they think they are in their physical equality to man, they will

always consent to be wooed and won. In the leisured classes, those who wish to invade the province of men, can perhaps play at these kind of reversions without entailing very much discomfort on their husbands and children; but what is a working man to do, if his wife takes the vocation of a man, in order to prove her belief in "sex equality?" What is the home without the softening influence of woman? The mother, who makes such sacrifices for her sons, and who is always ready to soothe and console. All normal women have a very strong instinct to protect the weak. This is shown when children by their love for dolls, kittens, or puppies. We see the boy who ruthlessly slays his sister's doll, but how amid tears and sobs she clings to the mangled remains of it, with almost greater affection than in its pristine beauty. The boy has a contempt for weakness; the girl is the ministering angel to it, and this is one of the strongest existing forces in nature that makes man the bread-winner and fighter, woman the consoler and comforter, the pivot and prop of the home. If this is to be taken away by the advance of opinions contrary to nature, what are you going to substitute in its place?

The strong protective instinct which is woman's attribute is perhaps the basis of most of the philanthropic schemes. There is no doubt the maternal instinct is, in itself, the foundation of all that is most charming in women. Both Spencer and Schopenhauer said that many women adopt rather a helpless pose, because they think that men like it; that their vanity is gratified by absolute trust and confidence which appeals to their manhood. He thinks the dissimulation of women is innate, perhaps more marked in savages than among the civilised. He says they cannot state any case with accuracy, they deceive their lovers, their friends, and even themselves. Balzac

writes in his *Étude des femmes* "Il y á toujours un fameux singe dans la plus angelique des femmes."

One may say that vanity has been acquired by women in the course of evolution, as, in order to attract the other sex, it is largely called into play. It is not therefore an atavistic regression, and in women is a trait that is transformed into ambition in men.

Prudhomme writes that the sentiment of justice is much weaker in woman than man. Her spirit is anti-philosophic, her conscience anti-judicial, her sense of comparison small. Probably there is no subject in education that brings this out more than drawing, yet the Board of Education has decreed that only boys are to be taught this, as it is not useful for girls. It is said that women exaggerate, but this is largely due to the deficiency of studies of comparison in their education.

It is not unfrequently seen that a criminal man seeks a good woman for his wife, and, curiously, a man of power and strength, with brutal instincts, has a great influence over this kind of woman, especially among the illiterate classes. The good woman has a large amount of self-abnegation, she even finds pleasure in being something of a slave to the man she loves. It is very remarkable what sacrifices women will make when their affections are deeply involved. We see there are ample opportunities for those who have the command of leisure to seek outside interests for the benefit of humanity. They have done good work on Boards of Guardians, and those who are on City Councils seem to do equally well. The normal woman does not pose as a pioneer of revolution, or sacrifice her self-respect on the altar of notoriety. She knows her duties and fulfils them. Ginova said the astuteness of a woman can overcome everything. The French also have a proverb: "Les femmes arrivent au plein saut ou

n'arrivent pas." In the western states of America, when women were placed on juries, the law was rescinded, as it was found their sentiment was such that it would not adapt itself to proofs of crime. They preferred emotion to proof, they persisted in making deductions according to their own reasoning, however illogical it was. We have, however, much more patience than men, we excel in the most beautiful lace making; and what patience do women show to erring sons and wastrel husbands?

The question that may arise is, Do normal women advance in intellectual power? We must, I think, turn to the question of heredity, we must understand its potency. The structure of an individual depends so much upon it. The power of natural selection to mould a species presupposes its influence, for it assumes that the individual selected will transmit her peculiarities to her children. In some books we are told that one disease is hereditary, while another is not so at all.

You cannot eliminate the influence of heredity from any disease. What is disease? It is abnormal life. And what is life? It consists of an inter-action between the individual and his environment. Dr. Campbell in his *Marriage of the Unfit*, says:—"Theft and murder are considered the blackest of crimes, yet hitherto, neither the law nor public opinion has prevented the marriage of the unfit." In no profession must the laws of atavism be more constantly brought before the mind than in that of the medical. Is not much of our criminality brought on more by neglect of these laws than by environment? Francis Galton, in his work on *Natural Inheritance*, says: "It has been argued environment may do much, but it will never wholly eradicate the bias of heredity. A, was the son of a bad father. As a child he resembled his mother, who was both healthy and good. She died when

he was ten years old. From henceforth the boy was entirely under his father's care, and the surroundings were unhappy. After a few years all resemblance to the mother was lost." Galton said there was always a tendency under strained conditions to revert to primitive type, and we frequently see this in the criminal classes, whose stability has been destroyed by environment. Lucchino, the assassin of the Empress of Austria, had bad heredity and surroundings. Finding he was an outcast, he endeavoured to revenge himself on one who had never done him the slightest injury. Many homes are often wrecked by uncontrolled temper. There is a kind that can only be described as an insane temper. Those who possess this are generally descendants from one or two generations of tyrants. Herbert Spencer, in criticising Bain on *The Emotions and the Will*, said: "It is true he has treated of habits as modifying emotions in the individual, but he has not recognised the fact that, where conditions render habits persistent in successive generations, such modifications are cumulative." Violent impulses, both in the normal and criminal woman, prove there is a want of stability, or variation in the heredity, and consequent regression. A well balanced person, with strong powers of self-control will, as a rule, be sociably inclined, and this favours stability. One often hears a man or woman acknowledging a bad habit such as restlessness, forgetfulness, and so on, and they say: "Oh! my father did the same," or "My mother was absolutely forgetful." A man who was in the habit of making cuttings of newspapers, and placing them in drawers where they never saw the light again, said his grandfather, father, and sister did the same. Among normal women there are numerous cases of a morbid strain from heredity, they are peculiar in their views, and very intolerant of any opposition. The complex

variations of heredity are so great, that we have scarcely a thorough knowledge of it. We do not yet know how large a part the mind plays in physical development. In many mental diseases how much the body sympathises with the mind in a reflex manner. Are we to think that the criminal is a hopeless subject? This was the opinion of the late Professor Lombroso who saw no cure for him but segregation. Are the laws of atavism absolutely inflexible? Can any reliance be placed on the ill-balanced inefficient brain, which at any time, and at any moment, may burst into a paroxysm of crime? This is one of the difficulties that surround the question.

The brain, which is the most important and complicated organ, is subject to the law of decrease from disuse. There is what may be called a casual type of mind developing in the present day; everything must be done with rapidity. Books and magazines turned out for the reading of the million without effort or mental strain. We are told what we should admire in Drama and Literature.

The feeble-minded age quickly, and are usually dominated by members of their family who have the advantage of them in brains. It seems to be essential for the well being of future generations that the average standard of ability should be raised. The needs of centralisation, communication, and culture call for more brains and stamina than the average of our race possess. Yet there never was a time when education was so insisted upon. Yes, but amongst a large section of the public it is of a primary type, and discontinued at the age of puberty, when the brain develops largely. On the other hand, amongst a different class, competitive examinations and cramming destroy originality to a great degree, and render the average intellect still more mediocre.

The only criticism that seems to open a way out to Professor Lombroso's opinion (that criminality is caused from arrested brain development, and that under these circumstances environment has far less to do with it than is supposed) seems to be an adoption of the Mendelian principles with regard to atavistic degeneration, which can only be secured by a suppression of the union of the feeble-minded and mentally deficient. Castle, in his book on *Heredity*, in support of the Mendelian principles (written in 1911), calls attention to the fact that environment was responsible for the reappearance in a species of a lost ancestral condition. Thus, he noticed that when rabbits are turned loose into a warren together they tend to revert to the grey-coated condition of wild ones; also become wild in their habits. This proves the determination of dominance. Where criminality has been strong in two or three generations past, but mitigated by circumstances, a return to slum environment will cause crime, which is really dominant in them, to appear again, often in an exaggerated and more violent form. Inbreeding also tends to bring to the surface latent or hidden recessive characters. The principles of dominance are seen in many features of both animals and plants. Castle says: in guinea-pigs a rough coat is dominant over a smooth coat. If a pure rough one is crossed with a smooth one all the offspring are rough, but in the next generation a smooth coat appears in one-fourth of the young.

If criminality is caused, as no doubt it is, from atavistic and degenerate instincts being dominant factors, can we wonder it is so common in a country the laws of which allow a single woman of feeble intellect to go backwards and forward to local workhouses having illegitimate children, who will eventually come upon the rates, as they

will be unable to support themselves? The spread of intelligent legislation may therefore minimise the evil effects of criminality in every community.

It is singular that nearly all the abnormal features that have been yet shown to follow the Mendelian laws of heredity in man are dominant; and these abnormalities descend from parent to offspring.

One of the first of these cases was mentioned by Faradee. The peculiarity consisted in a shortening of the fingers and toes. This descended solely through the affected, and the children of the unaffected did not in any way reproduce it. Drinkwater has published an account of the same peculiarity in an English family for five generations.

Whether criminality, which Lombroso took to be caused by an abnormality of the brain, follows on absolutely the same lines is a question that will have to be studied by the Eugenists and Mendelians of the future. We do not know exactly how many female criminals return to prison, or in what ratio the recidivist exists among their ranks. That prison itself has any deterrent effect on the repetition of crime can in no way be proved. The want of moral sensibility, which is innate in every female criminal, will always remain one of the greatest factors against a cure. Circumstances may always relight the smouldering fire. It is the opportunity or the occasion she cannot resist. Criminal instincts are always of a determined and obstinate character, with a want of reflection; therefore this in a great measure is absent when the crime is committed. We may say the exercise of reflection is one of the greatest safeguards, as without it we should plunge into many surrounding dangers. It is this very deficiency that fills our prisons. If such are in any way dependent on environment entirely, could that in

any way alter the marked moral insensibility of the criminal?

A most interesting work on mental deficiency is being carried on in America, where they have a training school for the feeble-minded, and 400 abnormal persons, of all ages, are kept happy and employed, many of them for their entire lives. They are classified according to the brain power, which is divided into the brain of the child of eight and that of the child of twelve. Many of the latter are fairly well-grown, and an ordinary observer would not be able to detect anything particularly wrong. They understand all ordinary conversation, and can do a child's labour with a man's strength, and as long as the plan of routine is arranged, and all responsibility and initiative taken from them, they work contentedly and happily. But as soon as they get on their own in any outside employment, they fall into all sorts of trouble, and sink into pauperism and crime. Many of this class marry and have large families that they are totally unable to support. The growth of their brain ceased at twelve years of age. They are always out of work if in the artisan class.

If belonging to the monied classes they are equally unfortunate in being out of a berth, and live on their people. The outside observer sees nothing in this but laziness, but the real cause is arrested brain development. The plan on which this theory is carried out in America is called the "Binet-Simon scale." After all, these were the main points of action to be observed in Professor Lombroso's views of the criminal and feeble-minded. A great idea of the brain power, even of children, may be got by watching them at play. The boy who takes the lead, and the girl who is designated by her nurses as a "little madam," will be those who rise above the average in life. Initiative is one of the greatest factors in the three-

figured income of a successful business or professional man.

It is said the feeble-minded and many criminals have a sideways swaying of the body, as opposed to the backwards and forwards of the normal.

The walk has a great correlation with the brain, and nothing shows a well-balanced brain more than an erect and firm step. The criminal is known by his shuffling gait and general hang-dog expression.

Many have a tendency not only to crime, but to a particular form of crime, which shows there is something in their plea that something drove them to it. Maudsley thinks with Lombroso there are three classes of criminals:—(1) Those who are driven to it from want or adversity; (2) Those who have in their natures a taint of crime, which may be corrected by favourable circumstances; (3) Those of a radically bad organisation, in fact, the criminal born. Without the force of heredity, alcoholism has much to do with the development of the criminal man and woman; at the same time a certain amount of degenerative poison must exist in the germ plasm to cause them to yield to it so readily. In criminal women the nervous system is ill-balanced, and neurasthenia and hysteria are very common among them. Perhaps their great degenerative feature is their enormous vanity, their idea of their being connected to wealthy and exalted families, who have lost their money, being one of the most common. A magistrate, writing of criminal women, says that in the nature of their crimes they are more cynical, more cruel, more brutal, more depraved than men. It is said that they are more precocious than men in crime; as a rule the career of a criminal woman does not commence till after the thirtieth year or thereabouts. They are very much affected by religious excite-

ment ; in fact, anything which brings them out of a quiet and regular life. Excitement of some sort they must have, and nothing is more satisfactory to them than to be the centre or pivot of that excitement. There is very little doubt, according to scientists, that the brain of man is larger than that of woman ; but there are a great many other facts in connection with this to be taken into consideration, to equalise this distinction, to mean greater cleverness. There can, however, be no doubt that they are much more able for consecutive mental effort of an exhaustive nature. Their judgments are more solid, and their sense of justice and comparison greater. Women are far more patient and enduring in calamity and affliction than man. The great hope is that in the advance of civilisation criminality may be eliminated by the force of a far-spreading system of eugenics, and the decrease of those factors that create unemployment and that class of poverty that is hopeless. Also, that the great lessons that the application of the Mendelian theory to man may teach us : The inexorable law of the alcoholic germ plasm as a contributor to racial degeneration and criminality.

The perpetuation of the criminal type seems to be endangered by the great trend of mediocrity existing in the present time, as it shows in itself the tendency to regression and reversion to primitive type. It is of these materials the criminal is made. The increase of wealth which reduces the necessity of mental initiative, paralyses the psychic centres. One of the greatest enemies to fight against in these days is mediocrity, and satisfaction with low standards. The increasing vulgarity of public amusements, the decay of literature and the Fine Arts, all point to the insidious advances of this enemy. Retrogression is the watchword of strained conditions of life. The wave of

social humanity must sweep through the land before we can in any way effectively arrest criminality. We must take measures to raise the condition of slum dwellers, and, by a living wage and good housing, arrest the dominant factors of the criminal circle. If we follow the theory of Mendel, we shall see that, in regard to the vegetable and plant world, a neglected condition leads to degeneration. Flowers return to their pristine wildness under such strain. Take a man away from the comforts of civilisation, the satisfaction of the smile of his fellow-men, and place him low down in the social scale, and you will soon see a marked deterioration in him. When these adverse conditions are united with an alcoholic and tainted ancestry, added to an utter want of the power of initiation, you soon have your criminal. The late Professor Lombroso did a great work in drawing the attention of the public to the genesis of the criminal, and his possible elimination.

THE OUTLOOK IN THOUGHT AND CULTURE.

BY THE REV. EDWARD HICKS, D.D., D.C.L.,

PRESIDENT.

IN the quiet retreat of our "Royal Institution," in the peaceful study of Literature and Philosophy, with its restful elevation above even the worries, to say nothing of the cares, of every-day life, there would seem to be little temptation, and certainly no possible occasion for the voice of heated controversy, even if the spirit of our constitution permitted it. At the same time, if our pursuit of Literature or Philosophy be in any sense real, and not merely for dilettantism or amusement, we cannot avoid touch or contact with what may on occasions distress that calmness of mind with which we should all doubtless like to approach the questions that come before us. "Dilettantism, hypothesis, speculation," says Carlyle, "a kind of amateur search for truth, this is the sorest sin." The Apostle of plain truth is speaking. The only justification, then, for the existence of a society like ours, is that quiet reality of spirit which may hope in its humble way, and in the quiet corners from which the influence of its members may extend, to assist in spreading a desire to know things as they are; not merely technically, or in compartments of thought, but philosophically, taking life as it is in all its threads and in all its environment.

And this will be my apology for the title of my address. If I venture to ask, What are the ideals, or some of the ideals, in Thought, or Literature, or Culture, that the century which has so far dawned upon us seems to set before us?—and in proceeding a little way to answer that

question should seem not to strike a note of elation or entire satisfaction, albeit not failing to observe indications of future brightness,—I shall, I know beforehand, obtain your forgiveness. To touch, almost with hesitation, the fringe of a great subject, is all that one can dare or hope for; and to do this in plain, unskilled expression, only desiring to be understood, is all that the speaker can offer, or that you will desire or expect.

We live in a world which, if it offered no ideals to challenge from time to time and to claim the allegiance of mankind, would die of inanition and decay. We have only to think of the great religious movements of the world, or the great periods of philosophical thought, or the rise of any age of art or mental culture, with its corresponding interval of decadence, and again of renascence, to see how true this is. There is a movement of life, of attainment, and again of rest and decline, until the next wave of fresh and invigorating force lifts mankind forward once more. But it is always the ideal that does the work. The Beautiful, the True, the Good, in some form or other, is beckoning humanity onward. Possibly the ideal of the moment is not the highest or truest form of beauty; almost certainly the truth is only partial and distorted; the moral good may be so misconceived that failure for a time follows. But in so far as it *is* beauty, truth, or goodness that is sought after, in so far it is eternally profitable to mankind.

We believe the universe, however vast it may be, to be under guidance—to have a purpose—to be benevolently led. And while the leading involves on the one hand the voluntary revelation of Truth, as it can “in divers portions, and in divers manners,” be vouchsafed to mankind from the eternal Source, so, on the other hand, does it imply and necessitate the struggle, the pressing forward, the

straining to attain on the part of mankind itself. So only is progress possible.

And from time to time, when a pause occurs in the movement of the advancing waves, it seems as if the whole tide were on the ebb. Vestiges of wreckage, or of useless weed, seem to be left high upon the beach, and we wonder if this is the end. But anon, the next great living roller from the illimitable ocean tells us not to despair. High water mark has not yet been reached. There is a future still before us.

Just now, perhaps, we, the heirs of civilized thought and culture and of a high and lofty creed, in the twentieth century of the Christian era, are in one of such pauses; lamenting the uncertainty of the interval; awaiting, or at least hoping for, the next wave of ocean.

Let us look back to one of the great wave-pauses. Let us go back two thousand years.

The world may be said, at the Christian era, to have exhausted itself in its efforts after truth and the final knowledge of things. It had "sought after God;" but its golden age of Philosophy was past. Alexandria, the university of the world, sheltered in its halls the ancient faith of Israel, and the thought of Greece, mingled with the mystical wisdom of the Orientals. Rome, which had become a centre of intellectual exertion, had been examining with eagerness the treasures, found through her material conquests, in the writings of Plato and Aristotle and their successors. But invention in thought was at a standstill. Eclecticism prevailed. Thought was settling down into a kind of indifferentism under the burden of its accumulated learning. Scepticism, the latest legacy of the academies, one in its aim as a practical philosophy of life with Stoicism and its apathy, and with Epicureanism, the "philosophy of the careless," exhibited also the same want of originality.

Men's minds were looking backward, not forward. They were gathering up the fragments of the old, and elaborating and combining as they could the ideas contained in previous systems. An age of mighty intellectual energy had moved, and wrought, and subsided, and still "the world by wisdom knew not God."

Religiously, morally, and intellectually, it was the time of the world's need. The old faiths of paganism were crumbling away as the mythical elements of which they were composed were melting in the critical light that philosophy and its methods had thrown upon them. The monotheism of the Jews was embracing some of the nobler of the conceptions with which it had come in contact in Platonism and Greek thought. And yet at the same time the morality of the age was growing corrupt in the frivolous unreality of sceptical sophistry and general unbelief. The world seemed waiting for some catastrophe or some enlightenment that should bring what was new and pure and saving to the rescue of the decaying old.

In such an age Christianity came to the world. It brought with it a morally renovating power. It lifted up a hitherto unknown spiritual ideal which caught men as men, while as a philosophy it drew power from what the world already possessed, and made it its own.

For philosophy had bequeathed a language. Alexandria was the home, not only of a new mode of thought, as seen in Philo's system, if such it may be called, but of a new repertory of words and ideas which supplied a current coin for the exchange of every kind of mental conception. "Alexandrianism," it has been well said, "was not the seed of the great tree which was to cover the earth, but the soil in which it grew up. It was not the body of which Christianity was the soul, but the vesture in which it folded itself. It was a literature, not a life." And when religion

and philosophy meet through the medium of language, language is elevated to a higher meaning and a vaster service, and religion begins to form an idiom of its own.

And so the early age of Christianity became eminently constructive, even though much of its progress came through conflict with opponents, and by the work of "Apologia" to explain its own position.

Meantime, the progress of literature and art generally was in abeyance; the world was going back, though the moral glory of Christianity saved it for the dark period that lay before it. And no words will be found to better express what I would say on this than those penned by Wyke Bayliss in his graceful book, *The Witness of Art, and the Legend of Beauty*, which appeared in 1876.

He makes a tasteful application of the old fable of Beauty and the Beast; the spirit of Beauty contending with the gross and heavy soul of the common world, and making progress only through periods of disappointment and despair. "The poet Virgil," he says, "was the last to hear the sweeping of her garments as Beauty passed away; the sculptors of the Laocöon the last to see the splendour of her face. Then came a thousand years of darkness to the painter, and of silence to the poet, with nothing seen but blood, with nothing heard but the rush of armed feet that would tread down the new message, the message more divine, the message of Love." He then traces the long history of trouble and conflict, with Christianity slowly winning its way.

Then he proceeds, "Looking back upon all this, we do not wonder that there was no place for Art. . . . that while men were defying every law of the great King Himself, they had but little reverence for the King's Messengers. So we see nothing of Beauty all this time.

. . . After the ten dark and silent centuries, Poetry and Art were indeed very nearly dead.

“Then came the painters of the early Italian school.

. . . When we see their frescoes, half effaced perhaps by time, of the saints with golden glory round their heads, more curious than beautiful, let us remember that these men lived nearly as long before Raphael's time as we live after him. They had no great school from which to learn. The buried statues of Greece and Rome, with their serene beauty, had not been discovered.”

And so, in the Mediævalists, while we have a revival, it is partial, and it is poor; but it is earnest and true, for “it clings to the holiness of sainthood, and expresses a passionate love for the religion of Christ”

But its Architecture, surely, is a miracle of beauty! It aspired; it was reverent; it longed to God. If we of to-day have advanced, we have lost also. The passion is gone, while we feel after massive grandeur—not always successfully—and anon look regretfully backward to those “dark ages.”

And out of that same darkness we hear the voice of Dante—the first great Christian poet. It is like the day dawning. “Since then many voices have joined in . . . Chaucer, and Shakespeare, and Milton.” These grand men, who had no great school from which to learn, have awakened the world again to poetry and art. The renaissance has arrived. The re-discovery of ancient classics has given a new birth to literature and thought. Once again the great tide rolls, and rolls with blessings on its bosom! Now a new message is heard. The Greek of old had sacrificed reality for ideal beauty: the Mediævalist had thought only of emotional expression. Now, the world of *nature* dawned upon men's eyes, “where alone we see beauty without sensuality, and passion without suffering.”

Then were born the modern schools of painting. Reality, naturalism in the best sense, true human sentiment, the sentiment of actual life. With many mistakes, and in opposing ways, men tried, and not in vain, to see, to dwell upon, to render real to other minds the beauty that God had put into every common thing; to translate the world in which men lived.

And if at this point we make mention of music, it is because it furnishes a concrete example, which may become a parable by which to appreciate the advance made in other avenues. Most persons who have little time for studying the deeper movements of thought or philosophy can, without any special gift or extraordinary effort, compass to some extent the main points in musical advance from the severe and confined dogmatism of the church of the Middle Ages, represented by the Gregorian chant, to the freedom and joy of modern music. As it rolls around us in the deep ocean of scientific harmony and graceful, freedom-loving, artistic idealism, which bears at once the noble vessel of spiritual aspiration, the yearnings of a living Church, and the lighter barks of a renovated and beauty-loving multitude, who know not why they are glad,—we perceive that the great wave of advance which was expressed by the renaissance and the re-formation of religious thought, four hundred years ago, was a very real advance. And we stand upon our rock in the present pause of the souging and murmuring tide—expectant.

Expectant! For what are the hopes before us as we stand upon our rock of past attainment? What are the ideals which the twentieth century is offering us? We are not satisfied, or are told that we must not be satisfied, with the work of the great Tone-poets of the eighteenth and early nineteenth centuries. They brought freedom into music, for they discovered something of the vastness

of its language, and of the immense power it possessed in its appeal to the human soul. The genius of one and another of the great composers was like a voice of inspiration which came to them, and was in them as a fire that burned them up, and tell it forth they must, whether men would hear, or whether they would forbear. Beauty lay before them, but truth was in that beauty; and but for the truth of reality and law that underlay the new language of emotion, love, and worship, these men felt that advance was not for them. Each in his own form of expression, his own dialect, his own level of soul-longing, wooed the great goddess of his being. Each in his own dialect. For the grand old worshipping Handel was Handel only, and could be no other, with his eye on the open heaven, as he himself said when composing his Hallelujah Chorus, so that "he did think that he did see the great God himself," and anon blotting his manuscript with his tears as he penned some such pathetic sweetness as "He was despised," or "I know that my Redeemer liveth."

Similarly, the bright and rhythmic Haydn, whose compositions are so perfect in form and logic and balance, till we are to-day tempted to look upon him as too easy, too superficially happy, for our own questioning era; Haydn was Haydn only; as Mozart in his sweetness and purity and wonderful brightness of melody could only be Mozart, and none other; and Mendelssohn, with his melodious, worshipping soul, which scorned even to compose for a purpose he felt to be below the reverence due to his divine muse—Mendelssohn stands out as a holy prophet like unto the lord Elijah whom he sung.

It would be treason to omit mention of the great Bach, the giant of the organ, and the father of much of our church music in its noblest form. He touched the highest

point in sacred composition, as Weber, later on, did in national opera; and both these men could claim the longest hereditary gift in music on record. In Bach we find an originality, depth and force, almost unexampled in any time or country. There is in his work an intense earnestness, united with a profound devotion to scientific form. His fugues are like a wrestling with some great mathematical problem; and the way in which he mixed the old modes of the plain song without losing sight of their construction, while refining their rigid harmonies by discords of later invention, provides the listener with exercise for his intellect which may leave him well-nigh exhausted. The time immediately following Bach had no sympathy with the depth and individuality of his genius. Within forty years of his death his fame had become a mere historic tradition. At the end, however, of the eighteenth century and the beginning of the nineteenth, his forgotten works began to be performed. But it was Mendelssohn who gave the permanent interest to the growing worship of Bach, by the performance of his Matthew Passion Music in Berlin in 1829, just one hundred years after its production.

These hasty reminiscences of the great Masters of Music are not out of place, for they illustrate the advance of that science by the genius of a few inspired and emotional intellects who worked altogether apart from the world outside them. They were prophets. They were products of their day and generation, and yet they were in advance of it. It is nearly always the generation next, or following that, that understands and appreciates the prophet or the poet. Whence, then, his power? It is not easy to say. It is the spirit that in some wonderful way arises and inspires more than one, that they who come after may reap the blessing. When Mendelssohn died in

1847, the world of culture and emotion was profoundly poorer; and the latter half of last century became musically a period of recollection and pause. Doubtless the genius of music needed rest, and men needed to gather up what had been so lavishly poured forth to them. Beautiful music, of course, continued to be composed and given to the world; but it was the music of the pupil, the obedient interpretation and cultivation of what had been learned from the great mind of a Beethoven, or the romantic brilliance of a Schubert or a Chopin. There was a distinct pause, for some thirty years or more, and then once again there came a change, a brief glance at which will serve to introduce what I desire to say as to the present outlook in Thought and Culture generally. We have had giants in the earth; just now we discern them not. But one great figure stands out. Whither does it lead, and where does it leave us?

In the middle of the nineteenth century, Richard Wagner began to disturb the world of music with his new and little understood principles of operatic composition. His "Rienzi" was at first a failure. "Tannhäuser" was not, even in Dresden, at first successful. But the composer went on. He more and more developed his system, determined to express both emotion and action in one unbroken poem of musical and verbal sound, bringing every possible aid to bear in the way of instruments, scenery and action, to fulfil his end. There will doubtless always be two opinions as to the possibility of uniting music and drama; but be that as it may, Richard Wagner's music is in itself, in its later development, a revelation. The magnificent storm of harmony and melody and power let loose in the performance of his music in London in 1877, during which it was my good fortune to see the composer himself conducting, did much

to win over the favour of England to his recognition. His last and greatest work, "Parsifal," carries out his principle, of words and music born together from the same mind, in the most complete manner; and posterity is left to judge of this great musician's efforts.

But Wagnerism had a disturbing effect. It was for a long time an apple of discord among friends in music. The innovations in harmony and melody, so peculiar to Wagner, the dropping of phrases before completion, interrupted cadences, and irregularity of time and rhythm, sequences of altered chords, etc., which lay him open to the charge of defiance of grammar,—are partly due to the very free use of chromatics which are not musically essential, and partly to the exigencies of dramatic action; thus rather supporting the contention that music and drama cannot run perfectly together. Music is a science under fundamental laws, while dramatic action is ever changeable and capricious. Wagner himself says: "I could venture to depict strange and even terrible things in music, because the action rendered such things comprehensible; but music, apart from the drama, cannot risk this, for fear of becoming grotesque."

Exactly. And it is just here that Wagner's music, performed apart from the stage, is necessarily misunderstood, and considered violent and bizarre. Performed among other selections on an ordinary orchestral programme, unless the selections are made with judgment, the music has a disturbing and irritating effect; and "cut," as the term is, by various conductors to make its performance possible by all players, and under all conditions, it leads to barbarism without apology.

This is what many sensitive lovers of music have often felt. And I think it accounts indirectly for many musical irregularities at the present day on the part of composers

of popular music, who consider themselves, perhaps, a kind of new Impressionists, after Wagner—but a long way after him. One feels sometimes positively hurt, and even insulted, at the wild, grossly imitative, purposely ugly music put forth for an utterly superficial and sensation-loving public.

And here I would close my remarks on music, except to just name the late Sir Arthur Sullivan, and our present Sir Edward Elgar, as representing for ourselves the fact that even in England serious and genuine students of music are to be claimed who have not bowed the knee to Baal. But that we are in a period of decadence, so far as general taste in music is concerned, I fear must reluctantly be admitted. The present generation can now neither listen to a complete Oratorio without weariness or boredom, nor stand the long, slow, majestic chorales, or solemn old hymns, which used to stir our fathers to spiritual determination and adoring service, as those before them were able to do

Nor is it plainly discernible what the twentieth century is offering us just now, or may have yet in store. We judge of an age, so far as its character is concerned, by what it cares for; by what it demands and accordingly finds supplied to it; while at the same time, those who "cater" for the popular taste, especially in these marvelous days of every possible scientific appliance and of unexampled ease in supplying the popular demand, have it in their power to furnish the best, the very best, if there is sufficient patriotism, sufficient love of humanity, sufficient honour for Beauty, Truth, and Goodness, to make the effort possible without regard to immediate and materialistic returns.

For what we have now said applies all round. There is an anarchism, a restlessness, an impatience of any sort

of restraint, not in music only, but in the drama itself, in literature, especially in popular fiction; and last, not least in the painter's art.

A remarkable book, deservedly to be read, put forth lately by Dr. Neville Figgis, entitled *Civilisation at the Cross Roads*, has an interesting passage on the so-called Post-Impressionists. "We are not," he says, "here to canvass the artistic merit of this strange new school of painting. But the movement means a good deal. By authorities like Mr. Roger Fry and Mr. C. J. Holmes we have learned something of its aims. We are shewn that it witnesses partly to that Oriental influence which has been pouring in upon Western Art ever since Japan was discovered, and partly to that cult of the primitive which has been growing every year. Here is a deliberate effort to step back into the child's view of the natural world, and to thrust away the lie of the photographic artist, which, rendering every detail, obscures the whole truth, and sacrifices colour and line to what is at bottom mere mechanism. It represents a desire to get away from our sophisticated world to one simpler. . . . I am not asking how far these men are right or wrong; the point is that they exist. Here, in one important sphere, with interests quite other than religious, men are seen in deliberate revolt against the mental habit of the Western world, as it has developed itself since the Renaissance."

What Dr. Figgis here points out seems to answer many questions. But the fact of the Post-Impressionists, and their revolt from the established rules of art, speaks also of another tendency which we may hopefully believe must have its day and perish. I mean the hankering after notoriety, the endeavour to do something in order to "arrive;" by legitimate means if you can; by violent means if you must; but at all hazards to "arrive." It is the spirit of

militancy against order, and of wanton disrespect towards that which men have learned to reverence or to worship, The Post-Impressionists are not the successors of the school of Monet and Manet in France, still less of our English Whistler, and of such men as Solomon, Hacker, Jacomb Hood, and others of the now distinctly rising English school. *These* men seek to present broad impressions, such as the eye really takes to itself, to the judicious neglect of detail; to give colour its vividness and light, and to present the values and the balancings of the whole picture presented by nature; and this, not as an undue pressing forward of the manner and the method, but as in entire subordination to the beauty and poetry and spiritualization of the scene in contemplation. We thank these great artists for getting away from the error of the pre-Raphaelites, from which our great Millais at length emancipated himself. For, undeniably, England, who can boast of a Reynolds as one of the foremost portrait-painters of the world, has a school of its own to honour and to preserve. Reynolds's "children of artless grace, his women of extreme loveliness, his men endowed with dignity," give his art an interest far beyond the mere portrait. And a visit to our National Gallery, or a recollection of the Art Department of the famous White City Exhibition in London, where the French and English schools were arranged in close proximity, and drew forth warm expressions of interest from foreign as well as home visitors, may satisfy us as to this. It is too true, that for some twenty years past, English art has not been at its best and greatest. The rapid accumulation of wealth in the modern world, the enormously increased expenses of living and the accompanying display and enjoyment of every conceivable comfort, have deadened the demand for high art. If the artist is to live to-day, he cannot, unless he is

rich himself, venture to offer to the world his highest and his best. There is no demand. Instead, year by year an increased display upon the walls of the Royal Academy of portraits only interesting to the wealthy subjects themselves, and often a trial to the painter, as offering no opportunity for idealization or for the cult of the beautiful, take the place of the noble subject-picture or entrancing landscape that should hang before our eyes. Again! demand and supply. And we devoutly hope that a more spiritual, a more intellectual generation may, in its turn, demand and then welcome a return of our British painter's best efforts, who at least must live if he is to paint at all. Perhaps the very cause just indicated accounts also for the false efforts of the Post-Impressionists. For just now nothing really *impresses* the British public; and it is that public's own fault that to-day in our world of art there is no great light, while there are a thousand glittering stars.

We have already glanced at Architecture, comparing our own day with mediæval England. We do this in full view of the noble cathedral rising in our midst, possessing already one gem in its beautiful Lady Chapel. But of that cathedral even the design has been changed since it was first presented to the world. And I would here commend to your thought some words of Mr. R. A. Cram in *The Gothic Quest*. He asks: "Can we as architects answer enthusiastically to the call of men who desire a Christian Church bringing to their assistance, not the considerations of a tradesman, but the fire of an artist? . . . Can we come to look upon Architecture as a part of the best language of art, the exalted privilege of which is the expression of the emotions, of the loftiest achievements of the soul of man, as they can be expressed by no other human power? . . . I believe we can. At all events we must, if we care for our art at all, except as a

means of making, or trying to make, a living. We shall have much to fight against; . . . we shall find opposing us a civilisation made up very largely of an un-Christian economic system, . . . rampant commercialism, narrow ideals" (pp. 200-1).

And Professor Rabbit, in *The New Laoköon*, writes:—"If the arts lack dignity, centrality, repose, it is because the men of the present have no centre, no sense of anything fixed and permanent, either within or without themselves, that they may oppose to the flux of phenomena, and the torrent of impressions. In a word, if confusion has crept into the arts, it is merely a special aspect of a more general malady, of that excess of sentimental and scientific naturalism from which, if my diagnosis be correct, the occidental world is now suffering."

And this leads me by an obvious transition of thought to the condition of science and literature during the last half of the Victorian era. The Victorian era is sneered at for many shortcomings; but it had its virtues, among not the least of which was its seriousness. And the writers of the Victorian age were very laborious; they took trouble; they were workmen who needed not to be ashamed, whether in science or literature. Poetry stands by itself, and the splendid work of the great Victorian poets must claim us briefly presently. Just now we remind you of such writers as Dickens and Thackeray, Ruskin and Carlyle, Kingsley and Maurice.

These men were typical. These men were all in earnest. These men, consciously or unconsciously, exhibited a *tendency*. We have sufficiently left them behind to be able to say of them that they "set out, not only to give rein to their genius, but to exercise an influence on the progress of the world. . . . Now that they are gone," it has been said, "we remember them, not only

because we have their works on our shelves, but because the effect of their work is all around us. Thackeray and Dickens amongst our novelists, Tennyson and Browning amongst our poets, Ruskin and Carlyle amongst our writers of prose, are perhaps the greatest names in the galaxy of genius which made the Victorian age a brilliant epoch in literature, but they are also each one of them a prophet and teacher and social reformer.”*

And these writers, moreover, were very solid. To take one of their books into one's hand meant sitting down not simply to enjoy, but to study, to think, to persevere, to master. No one of us, even to-day, should be able to rise from any of these Victorian thinkers without feeling braced up to do our own serious part in our world. And their works remain. If even they set out consciously to teach, as Ruskin and Carlyle did, and even though they differ so widely in their methods, is it impossible not to feel that these men had a mission, and that that mission is to us, though much of what they tried to do is already accomplished, so far as the conditions of outward life are concerned. Ruskin's gentleness and beauty of soul and sweetness of style will at least incline us to consider whether his pleading may not be good even for to-day; and if Carlyle, in his mercilessly rough and rugged way, angers us by his frankness, it will do us no harm in these rushing, noisy, hurried times of ours, if we can but stop and listen, and not reply, as a Liverpool gentleman did to his friend in the street the other day, when asked if he had read a certain article, or book: “I never read anything; I have no time.”

And in such a tone many of us are constrained to think we *may* reply. And perhaps it is because so many writers of to-day are so scrappy, so futile, because they them-

* Rev. Dr. Warman.

selves cannot stay to say more,—“they have no time.” And they must pander to the hour. They must fall in with the whim and the call for superficial realism and primitive rawness; and even if they satirise us, they will do it, as George Bernard Shaw does, in the same breath that they give way cynically to our weakness. “It is,” as Professor Rabbit said to us just now, “that the men of to-day have no centre; or sense of anything fixed.”

And whence this unsatisfactory symptom?

It is very largely the result, a result no doubt inevitable, of the great discoveries and the consequent unsettlement of ideas induced by the scientific attitude of the later Victorian period.

This was frankly materialistic, as the word is commonly understood.

For science goes its direct way, without pausing to consider how its justifiable conclusions may affect the mind of the multitude, who resent nothing so much as a shock to their established ideas. The multitude, who cannot follow out those conclusions, and who will not wait to see how they may, by and by, be balanced by other considerations, gave way to a panic from which we have now fairly recovered, at least in appearance.

Naturalism and Intellectualism, each from its peculiar stand-point, drove men to the conclusion of a blind necessity. Hermann, in his study of Eucken and Bergson, says of these systems . . . “In the one case we have mechanical, in the other logical determinism; intellectualism reducing freedom to the mere recognition of, and acquiescence in, logical necessity. Just as naturalism views science as an absolute, so intellectualism regards philosophy as existing by and for itself, and developing by and through its own internal dialectic. And while intellectualism frees us from the tyranny of the

immediately *given*, and the bondage of sense, it commits suicide at the very point of its victory by surrendering freedom and personality as really, if not as palpably and explicitly, as naturalism."* And Mr. Hector Macpherson puts it thus in his volume on Spencer . . . "For all practical purposes it signifies little whether mind is the temporary embodiment of a spiritual principle, or a specialised form of matter. In either case man is a bubble on the great stream of time . . . While materialism puts round the prisoner's neck a plain, unpretentious noose, Hegelianism adds fringes and embroidery. The one passes sentence of death, while the other indulges in a poetic funeral oration."

It is easy to see that this spirit destroys the sense of responsibility, and leaves the soul of man shivering in a grey, unsympathetic universe, doubting his own aspirations, or even his right to feel them, and leaving him "miserable, and poor, and blind, and naked." Thousands felt this without expressing it, and went groping on their way, doubting everything, or else wrapping their chilled souls in a mantle of self-determined will-faith, ignoring the voices outside, which seemed to reduce a living universe to a vast and ghastly corpse.

And though science is now abandoning this stand-point, the generation of those who feel the result of its dogmas moves less rapidly forward, and the practical infidelity following that feeling is even now disporting itself on the crests of the waves that are returning to the shore with deep rolling messages of assurance and peace.

But the great souls that felt and met the darkening night and the ebb of faith gave voice to the questions and doubtings of their fellows. If science was cold and relentless, the heart and intellect of man spoke in the poetry of

* *Eucken and Bergson*, by E. Hermann.

Tennyson and Browning, and in the works of Arnold, though in his case on another plane of feeling, and not so sympathetically with the doubting wayfarer. Arnold founded a kind of faith in his view of the world, which, though far removed from the comfort of Christianity, certainly denied the materialism that opposed it. His prose definition of the power behind the visible order of nature is well known; . . . “a stream of tendency, not ourselves, which makes for righteousness.” Whatever his scepticism, he found himself on grounds of reason precluded from taking the last and greatest step.

Arnold expressed the sceptical tendency of his time in the following exquisite words:—

The sea of Faith
 Was once, too, at the full, and round earth's shore
 Lay like the folds of a bright girdle furled.
 But now I only hear
 Its melancholy, long, withdrawing roar,
 Retreating, to the breath
 Of the night wind, down the vast edges drear
 And naked shingles of the world.*

The other two poets struggled with, resisted, rejected, the materialistic denial of faith, and, according to the cast and calibre of mind that reads them, have each given delight and strength to those who felt the misery of doubt, and who only needed a voice to speak what they struggled to express to their own hearts.

Of the two, Browning comes nearer to Arnold than Tennyson, being more critical, and less disposed to accept beliefs as he found them. He approaches faith by the critical method, but in later works he finds criticism imperfect as a method, and ultimately unsatisfactory, and embraces faith in itself and for itself.

* *Dover Beach.*

Browning's personal stand-point may be conceived from several passages in *Pauline*, his earliest published poem. The following passage is typical.

My God, my God, let me for once look on Thee
 As though nought else existed, we alone ;
 And as creation crumbles, my soul's spark
 Expands till I can say,—Even from myself
 I need Thee and I feel Thee and I love Thee.
 I do not plead my rapture in Thy works
 For love of Thee, nor that I feel as one
 Who cannot die : but there is that in me
 Which turns to Thee, which loves or which should love.

His *Christmas Eve and Easter-day*, nearly twenty years later, give forth much more power, and display his reasoning and satire. He accepts Historical Christianity, while he is impatient and scornful of un-reasoning and obstinate dogma and self-confidence. In the *Ring and the Book*, nearly twenty years later still, there is some splendid reasoning on facts and faith and morals and God, notably in the Pope's soliloquy. If Browning had been the only poet of his time, the Victorian period need never have been ashamed.

Tennyson, like Arnold and Browning, acknowledges himself the child of an age of doubt. But he takes a more positive position. Unlike Arnold, he declines to enthrone reason as the arbiter of the soul ; and unlike Browning he seems to see more of an opposition between faith and reason, inclining to accept the former rather than the latter. He expressed the experience of thousands who *felt* but could not clearly *see* the path of reason through the doubt, and, putting it aside, triumphed by an effort of will. His *In Memoriam*, for which I confess a great partiality, from its very commencement bears out this attitude.

Strong Son of God, immortal Love,
 Whom we, that have not seen thy face,
 By faith, and faith alone, embrace,
 Believing where we cannot prove.

And there is a passion of faith in the stanzas :

If ere when faith had fall'n asleep
 I heard a voice, "believe no more,"
 And heard an ever-breaking shore
 That tumbled in the godless deep;

A warmth within the heart would melt
 The freezing reason's colder part,
 And like a man in wrath the heart
 Stood up and answered, "I have felt."

Tennyson's exquisite beauty and ease of language, his melodious flow and perfection of rhythm, made him a certain favourite where Browning's ruggedness and almost wilful obscurity prevented his finding readers. But both poets give us the most exquisite gems of feeling and emotion to be found in Literature, and both are a glory to the nineteenth century.

And their places have not been filled. The 20th century has not brought even the vision of such poetic genius into view. A long ebb has intervened. And some men think, as others have thought before, that the day of poetry, high, aspiring poetry, rejoicing in hope, is dead. That at least in literature generally, we have lighted upon a barren time. "In the 20th century we seem to have come upon a pause in literary genius. We have passed to the age of the newspaper and the magazine, and without disparaging the literary output of to-day, we still fondly feel that there were giants in those other days."*

Yet there is promise to-day! Both in culture, in

* Dr. Warman.

poetry, and certainly in science and philosophy, we may already see a new dawn.

“One of the pleasantest features in the intellectual landscape,” writes Mr. John Bailey in *The July Quarterly Review*, “is unquestionably the revival of poetry. . . . This, like everything else in a democratic age, seems at present to be more remarkable for extent and size than for distinction. But we need not quarrel with that. The thing is genuine; the stuff is honest poetical material, not shoddy. . . . If there is too much rhetorical realism, . . . that is natural in an age dominated by melodramatic journalism;” and he adds, “it will pass in time.” And then he draws attention to the volume entitled *Georgian Poetry, 1911-12*, unanimously inscribed by its contributors with the name of Robert Bridges. Dr. Bridges was not then, of course, anticipated as the future Poet-Laureate, and Mr. Bailey’s long appreciation of him in the *Quarterly* was also written before the selection was made. But he points out that these young poets dedicate their volume “not to some revolutionary critic who flatters them by saying that they are the people, and wisdom will die with them, but to the most scholarly of English poets, of the intensely Etonian and Oxonian Robert Bridges. In him they rightly recognise the greatest living master of their art in this country.”

And the new number of the *Author*, edited by Sir Walter Besant, has the remark: “Mr. Asquith’s selection of a Laureate, therefore, may certainly claim the approval of an influential band of artists; for the “Georgian Poets” included more than one who was looked upon as a possible Laureate himself; not *one* who had not done something worthy of note.”

I will not anticipate the discussion which later on may give us some interest, as to the retention of the office of

Laureate itself. I will only now call attention to the fact that, so far as yet appears, the summoning of Dr. Robert Bridges from his quiet hiddenness of a lifetime is regarded as a singularly happy inspiration, and as holding out real promise for the period now before us. "He is selected simply on the ground that he is a poet-scholar of the first rank with a muse peculiarly his own—a muse that is absolutely un-related to the Victorian tradition, though he is really a Victorian poet—a muse that is spiritually related to Milton rather than Tennyson; to Spenser, Shelley, and Keats rather than to Browning and Arnold. A poet's poet . . . he will add new dignity to the office of Poet-Laureate."

So far the *Contemporary Review*, which also points out a splendid passage in a dream of the earth to come in *Prometheus the Firegiver*, beginning with:—

And not all thou seest, with tranced eye,

And going on to anticipate a race

born to shield

A happier birthright with intrepid arms,
 To tread down tyranny and fashion forth
 A virgin wisdom to subdue the world,
 To build for passion an eternal song,
 To shape her dreams in marble, and so sweet
 Their speech, that envious Time hearkening shall stay
 In fear to snatch, and hide his rugged hand.

Who will say that there is not a noble and inspiring idealism here?

Taking the volume in my hand, I do not find it difficult to come upon some rare gems without much seeking. There is one of the shorter poems:—

O youth whose hope is high.

Anything more noble as an incentive to lofty aim in one

entering a university with life before him it would be difficult to light upon. And the exquisite couple of verses :

Since we loved,—(the earth that shook
As we kissed, fresh beauty took)—

gives the passion of love as much more than an instinct, a life-long noble joy (p. 346).

And the morning hymn beginning—

O golden Sun, whose ray
My path illumineth.

I know of nothing finer, in short simple stanzas. It is impossible to dwell further upon Bridges' poetry now, except to say that the sonnets on *The Growth of Love* give us some pearls of beauty; the poem *Eros and Psyche* carries the reader through on its own wings; and the very first lines in the *Prometheus* tell us we have a classic after Milton's own heart.

Therefore, the tide will rise again. We shall not be left long in the whirlpool or the back-water; and it is in itself something to ponder over and be thankful for, that it pertains to some one in this country to put out his hand and call to the front rank of influence one who will be owned and followed as a master in literature and poesy.

I regret that I can only glance at what is really the most important consideration of all, viz., the position of physical science and of philosophy, as departments of thought at the present moment; for on the attitude of either one or the other the mind of the next great period must to a great extent depend; properly speaking, upon both as acting in complementary fashion, for they are really *both* sciences—sister sciences—one bringing material to the other, and both together furnishing the foundation for a wider and more comprehensive chart upon which the mind of man may gaze, as he steers his bark across the

vast sea which *must* ultimately break on some shore of rest and eternal reality.

A few words from Whetham's article on *The Individual Atom* in the *Quarterly Review* for July, in which he gives some wonderful illustrations of radio-activity, will greatly help us here. "Science," he says, "has nothing to say in its own language about the ultimate realities, if such there be, that lie behind our concepts of wind or star or atom. Science, in its own field, deals merely with sense perceptions, and the mental concepts and schemes we form to reduce them to order. . . . But science, though it cannot sit as judge, may claim to be the first and chief witness to be examined when the problem of Reality is called up for judgment in the Court of Philosophy. Not the least part of its evidence will be the demonstration to our senses of the direct effect of the individual atom."

This supports our point. The truth is, while philosophy is widening as it takes in more actual and sensible evidence, so physical science is recognising possibilities beyond her own accustomed domain. And here the President of the British Association uttered some valuable words when he said at Birmingham: "I am one of those who think that the methods of science are not so limited in their scope as has been thought; that they can be applied much more widely, and that the psychic region can be studied and brought under law too." Again. "The methods of science are not the only way, though they are our way, of arriving at truth." And yet again, we have the language of philosophy itself. "Genuine religion has its roots deep down in the heart of humanity, and in the reality of things. It is not surprising that by our methods we fail to grasp it; the actions of the Deity make no appeal to any special sense, only a universal appeal; and our methods are, as we know, incompetent

to detect complete uniformity. There is a principle of relativity here, and unless we encounter flaw or jar or change, nothing in us responds; we are deaf and blind therefore to the immanent grandeur around us, unless we have insight enough to appreciate the whole, and to recognise in the woven fabric of existence, flowing steadily from the loom in an infinite progress towards perfection, the ever-growing garment of a transcendent God."

I do not think Pragmatism is going to save us. In a general sense, the ordinary theology of practical working religionists is pure pragmatism. They want to get hold of something that works. But for those who are troubled by thinking, and who cannot and will not rest unsatisfied with mere experiment, it is imperative to note clearly the revolt which is taking place from our civilisation of complacency and soullessness, the recognition which is being accorded to the value of the religious truth-sense, and the growing repudiation of the tyranny of the mere intellect. A close study of such philosophers as Eucken and Bergson will help such thinkers materially, the one by the *Activism* which is wrapt up in his philosophy; the other by his insistence on the profound significance of the Intuitive faculty.

Surely, then, we need not despair. Theology in the truest sense, is slowly coming to her own; and while science and philosophy are ever supplying fresh material, she may, without arrogance, and in sober rejoicing, regard the new spiritualization of both science and philosophy as a reward at last to her faithful witness to the truth she guards; until, as sister sciences, the three together shall voice to man the harmonious answer to his persistent cry, for the full-orbed light of Truth concerning himself, the universe, and God.



THE METHODS OF LAW: A REVIEW OF THE
PHENOMENA OF COMPARATIVE
JURISPRUDENCE.

By BERTRAM B. BENAS, B.A. LL.B.

JURISPRUDENCE has been well said to be the science which reduces legal phenomena to order.* But, as Professor Holland points out, though the science is one, it may possess as many spheres as there are spheres of law.† Comparative Jurisprudence may thus be regarded as the application of the principles of the science to the phenomena of the laws of various communities, a rationalisation of the points of similarity and the points of distinction between the “*corpora juris*” of the world. The science performs a loftier service than the endowment with that technical advantage, which an appreciation of its methods secures for the legal practitioner. It throws light upon the common endeavour, the universal effort which, in varying degrees of intensity, and with varying degrees of success, characterises the striving of humanity towards a conscious life of progress, of protection, of peace, of order. Law secures the realisation of these endeavours, as they alone can be realised, by the employment of methods and of forms. The elemental theory of an innate nomism is a conscious theory of the instinctive type, “intuitive,” to borrow from the terminology of the widely current philosophy of M. Bergson. Between the dawn of the elemental

* Holland—*Jurisprudence*, 9th ed., p. 2. † *Ib.*, p. 12.

intuition in primitive civilisation and the recognition of the existence of an abstract theory of law—the development of a science of law, an appreciation of Jurisprudence—lie the constructive efforts of mankind to work out in practice the rules by which a corporate existence can be lived in peace—the internal law of states—leaving to a later period the cultivation of methods—international law—by which corporate encounters may be waged with the minimum of distress. But the chief point to realise is that the processes preceded the rule—and that rule springs from the process, even if it be admitted that the process has sprung from the elemental intuition of order, or, as the records of history perhaps would tend to show, an elemental opposition to disorder.* The Lord Chancellor (Viscount Haldane of Cloan), has emphasised this circumstance in his address on *Higher Nationality*.† “Looking first at the early English Common Law,” the Lord Chancellor observes, “its most striking feature is the enormous extent to which its founders concerned themselves with remedies, before settling the substantive rules for breach of which the remedies were required. Nowhere else, unless perhaps in the laws of ancient Rome, do we see such a spectacle of legal writs making legal rights.”‡ If the reference to legal writs—remedial law—were extended to the penultimate objective of law—the execution of the law, and the satisfaction of its requirements, the ultimate objective being envisaged as order and social justice—the Jewish Law provides the earliest reference to the precedence of action over enactment in the narrative of the constituents of the civilisation of the white

* See Sir Henry Maine's *Ancient Law*, ch. i. Sir William Markby's *Elements of Law*, ch. ii, § 95.

† *Higher Nationality—a Study in Law and Ethics*—by Viscount Haldane of Cloan, Lord Chancellor of Great Britain.

‡ p. 11.

racés. Regarding the earlier satisfaction of the law in the Garden of Eden as a specific law applicable to its sole inhabitants, the first illustration of a universal law appears in the execution and satisfaction of the law in the case of two kinsmen who broke into disorder of the kind incurring the highest penalty capable of infliction. It may be said that the declaration of the law and its satisfaction were co-incidental, but it would be more in keeping with the facts to assert that the execution of the law followed upon a declaration of a human right—a right declared in the process of the remedy—a remedial declaration of the law. There was a human invocation of the law—none the less human if posthumous—and in the exercise of justice the first right of man was declared—the right to life.

A later instance of evolutionary law—the declaration of law evolved in decision—deals with the rights of property. The daughters of Zelophehad sued for an inheritance and in the judgment the law of inheritance in such cases is declared.*

* *Numbers*, ch. xxvii. The instance here quoted was suggested to me by my father, whose widely recognised gift of illustrative exposition was one of the most fully appreciated characteristics of his literary work for the oldest learned Society of Liverpool—a work which extended over a period of more than 47 years (1866–1914). His interest in political philosophy—the origin and nature of civilizations and their development—was shewn by the subject of the presidential addresses which he delivered to the Literary and Philosophical Society of Liverpool (1890–1, 1891–2), *The Philosophy of the Labour Question*.

Sir Edward Coke, in 3 Rep., 40 a, b: published at the beginning of the 17th century, refers to the instance above quoted, observing that this case seemed of great difficulty to Moses, and, therefore, for the deciding of the question, Moses took divine consultation. Coke asserts that “in this, as in almost everything, the Common Law was grounded on the Divine Law.”

The same instance came to the fore again, as an authority for consideration by those other than Jewish jurists, when the Jews of Aden, which is technically regarded as a part of British India, asked that they might be exempted from the Indian Succession Act (X of 1865) and restored to their old law, “the ruling in Zelophehad’s case.” The Jews of Yemen had lived under this law for some thousands of years, and, with characteristic British

The Lord Chancellor proceeds to observe, in referring to the English Common Law, that "the germs of substantive law were indeed present as potential forces from the beginning, but they did not grow into life until later on. That is why the understanding of our law is even for the practitioner of to-day inseparable from knowledge of its history."*

Substantive Law may be regarded as the collection of definite rights which the law will enforce, and Adjective Law the method of their enforcement. Although the remedial process for the enforcement of rights may have preceded their definite declaration, yet in the course of history declaration of rights has also preceded the pursuit of enforcing remedies. Rights may be declared in more ways than one. The chief systems of law, the principles of which govern the greater portion of the world, exhibit the existence of an authoritative repository of declaratory law apart from the expression of law in judicial decisions. This repository in the Jewish Law is contained in the five Books of Moses. In the English Law, the Statute Book of Parliament became the dominant source, and in the Roman Law—although as Sir Henry Maine observes,† the true period of Roman Statute Law does not begin till the establishment of the Empire—the statutory system is represented in earlier times by the XII tables,

governmental genius for according the appropriate legal justice to all nationalities, the request was readily granted, and the old Jewish law was upheld by the British judiciary (see Sir Courtenay Ilbert's article "Indian Codification," *Law Quarterly Review*, v., at pp. 367-8, and the *Government of India*, p. 397).

Sir Frederick Pollock, in his *Introduction and Notes to Sir Henry Maine's Ancient Law* (p. 5), observes: "We may safely say that the case of Zelophead's daughters is the earliest recorded case which is still of authority"—a tribute to the antiquity and continuity of the Jewish Law, and its distinguished and distinctive place in Jurisprudence.

* *Higher Nationality*, p. 13.

† *Ancient Law*, ch. ii.

and by the subsequent series of forms in which enactments were contained. Professor Sheldon Amos points out* that "in Rome as in all other States not only was the customary and unwritten law anterior to all express legislation, but the occasions in early times on which legislation was actually resorted to were during a long period few and far between." Referring to the declaration of rights in the pursuit of remedies as "judicial legislation," he observes that "the most decisive way in which law progresses in the earlier stages of society lies in the process of administering or applying the law. Laws of procedure, are the earliest of all laws; or to express it differently, it is by the formal adjudication of a disputed claim that the reality of the limitations of the claim itself come to the light . . . Rules which have guided former arbitrators are held to be binding on each succeeding one; and as the state grows and its executive organisation becomes strengthened the rules and principles in conformity with which rights are actually protected become transmuted into the laws, which on the one hand define rights themselves, and on the other hand ascertain the modes of protecting and enforcing them."† Professor Sheldon Amos further observes that the real value of the XII tables from the point of view of Jurisprudence, is that they illustrate "the superior tenacity and the richness of unwritten or customary law, as compared with any form of written law. The paragraphs as they stand are little more than brief legal maxims or mementoes of settled legal principles which must have owed all their life and even their meaning to a quantity of special notions widely diffused abroad, as well as to an infinity of detailed usages, of which no account whatever is contained in the words of the law itself. . . .

* *The History and Principles of Civil Law.* p. 60. † *Ib.*, p. 39.

Thus, the history of the XII tables exhibits first, the fulness and richness of the customary law; . . . secondly, the firm hold retained by this customary law on the habits and sentiments of the people . . . and thirdly, the service which a brief and legibly compressed form of written law may render to the unwritten mass of the law, maintaining its integrity and directing its development.”* Adjective law—process, which constitutes the ways and means of law—has its own “ways and means.” There is the process of setting the law in motion—the process of securing the parties to the proceedings before the proper tribunal—the process of eliciting the facts of the case—the process of deciding the law—the process of its due execution. Each process acquires a set of principles of law to determine the methods by which the process should be conducted. Thus Adjective Law has its own Substantive Law. Legal process not only evolves slowly, but varies more than legal principle in accordance with the articulate consciousness of the specific community. It is necessary to observe that the consciousness of the community must be articulate, if the community is to be held to approve the legal process prevalent. It may be that at some anterior period the community approved the methods as established, but it does not necessarily follow that in a later period the same approval would be given, so that unless a community has reasonable means of articulation, it cannot be held to concur in much that is done in its name. Professor Sheldon Amos, in dealing with the history of the Civil Law,† points out that proce-

* *Ib.*, p. 13.

† “By the Civil Law is generally understood the . . . law of the Roman Empire.” “. . . The body of Roman Law or *Corpus Juris Civilis*.” I. Blackstone *Comm.*, Introd. (p. 81). “. . . those . . . who intend to profess the Civil and Ecclesiastical Laws” (*ib.*, p. 14) . . . “civilian and canonist” (*ib.*, p. 15). “. . . the phrase Civil Law, in Eng-

ture and all that pertains to procedure is in some of its aspects that which "the least admits of the minute and imperceptible changes which the other part of the law silently experiences. It thus happens that the laws of procedure are peculiarly apt to lag behind the rest of the law in respect of their adaptation to national wants, and it is only when a great political crisis occurs, or the national intellect is . . . aroused, that the process of administering justice undergoes the renovation which it has long needed"*—It may be therefore a frequent phenomenon that the substantive laws—the legal principles—of a community are loftier and more humane than the adjective laws—the methods and processes by which the principles are enforced. The primitive principles of the Common Law of England—those of a very early date—are not generally dissonant with modern ideas, but it would be impossible to assert that legal process in those days does not jar upon the consciousness of to-day—and furthermore it is quite probable that it was discordant to the mind of a much earlier period.† It is to be observed that in those countries which are yet bound by the gloom of the darker ages, the public consciousness, if and when it can have the chance to be articulate, refuses to allow itself to be regarded as in favour of all the methods and processes of the law under which it lives. At any particular period in legal history, the worth of the law as a whole can only be fully surveyed when the substantive law and the adjective law—principles and process—are viewed independently as to their ways and means, as well as together forming a single entity, and to be only just rather

land, is not applied to the Municipal Law [the general Law] of England, but to that Law founded on the Roman, which is used in the Admiralty and Ecclesiastical Courts." J. Williams—*The Institutes of Justinian*, p. 5.

* *The History and Principles of Civil Law*, p. 18.

† See Jenks, *Short History of English Law*, ch. iv, p. 46.

than generous to any people, regard should be had to the conditions under which legal procedure and public opinion run parallel.*

If the letter of the law prescribes the methods, further regard should be had to legal machinery, which may provide for adaptation to the requirements of the public consciousness—for this may be part of the methods by which the law evolves—and, therefore, if the letter of the law at a given date may have prescribed a particular method, machinery may be at work to enable the process to be more in consonance with the public will. Fortunately a wide review of the contemporary literature will generally render possible a fair estimate of the concurrence or the conflict of Law and public opinion.

Those who value the system of the Common Law do not assess its worth merely by the wealth of legal principle it possesses, nor by that flexibility, which at least some jurists regard as its leading characteristic†—it is valued for its fairness of method, and the independence of administrative interference in its adjective law.‡ The

* See the observations upon "The Influence of the People on Legislation," by Professor Sheldon Amos—*The Science of Law*, ch. xiii, p. 387.

† The views expressed in two works, with similar titles, by two Oxford jurists, may be conveniently considered and contrasted. Sir William Markby (*Elements of Law*, ch. ii, § 98), pointing to judiciary law, refers to "its great, though possibly its only advantage—that of *flexibility*, or capacity of being adapted to any new combination of circumstances that may occur. . . . It is because English judges are absolved from the necessity of stating general propositions of law, and because, even when they are stated, they are always read as being qualified by the circumstances under which they are applied, that our law, in spite of our respect for precedent, remained for so long a period *flexible*."

The present Vinerian Professor, Mr. W. M. Geldart, in his *Elements of English Law*, observes (p. 28), "I do not agree with those who think that *flexibility* is a characteristic of Case Law. The binding force of precedent is a fetter on the discretion of the judge; but for precedent he would have a much freer hand." Thus there is a flexibility of legal opinion on the flexibility of the law.

‡ See Dicey, *The Law of the Constitution*, ch. iv (The Rule of Law—its nature and general applications), ch. xii (Rule of Law contrasted with Droit Administratif).

incessant insistence upon the highest form of proof, necessitating the rigid exclusion of irrelevancy, the supremacy of the Law over those who administer it, these are the features which have raised the Common Law* to the position it has attained in the legal systems of the world. It is to be admitted that the first was not typical of the early days of the Common Law.† How the method evolved, constitutes a long and interesting chapter in the history of English legal institutions. But that it should have reached its present form may be regarded by many as being due, at least in some measure, to the union of two elements, which, each in its way, and reinforced with each other, have contributed so largely to the character of typical modern civilisation—the growing spirit of humanism, and the growing spirit of scientific enquiry. The articulate humanity of to-day is intolerant alone of inhumanity and of irrationality. There must be scientific proof in legal enquiries, and there must be humane consideration in the execution of judgment. It is to be observed that in countries where the proof of facts in issue is allowed to fall beneath the level satisfactory for the proofs generally necessary for the validity of scientific demonstration, a deflection from the level of humane consideration appears to be existent. In one case it may take the form of a grotesque morbidity which shrinks from the assertion of the coercive authority of the law. In another, it may take the form of a biassed barbarism which decides by design, and judges by jugglery. If it be so that the high places of fair-

* The term "Common Law" has several meanings:—(i) The general law of England as administered in the Common Law Courts, contrasted with the system of "Equity" as administered in the Chancery Court. Since the Judicature Acts (1873-5) the principles of both systems are applied concurrently, but the allocation of subject matter between the "Chancery Division" and the "King's Bench Division"—in many respects the successors of

See Jenks, *Short History of English Law*, chs. iv, xviii, xix.

ness in method are scaled by the breathing of the spirit of humanism and the spirit of science, then there are none to-day, to whom these life-giving elements are denied, except to those in areas in which there is a refusal to allow the clean and fresh currents to blow with freedom.

It is right that credit should be given to humanism and to science for the amount of their services—but not for more. If the trend of legal history is closely considered, it will be found that humanism and science in modern times may have afforded the impetus for the development of scientific and humane methods—but only the impetus. It was only an impetus to the development of the implicit essence of the idea of Law, which owed its origin to the abstract intuition of Justice—a spiritual idea, expressly identified with spirituality in Jewish Law and the Civil Law, is associated in the Common Law less directly, but quite definitely with the recognition of spiritual forces. There is in all three systems a recognition of the reign of an abstract Right, of an abstract Justice, and in all three systems, an invocation of the highest spiritual expression for the elucidation of Justice. How far the three systems diverge in their consideration of that spiritual expression is a matter of history—not that between all three there is not some common ground, some shared by one pair, some by a pair made by the joinder of one of the others, and some shared by all three. To determine the existence and the extent of a direct interchange or derivation of legal ideas and methods requires research in a territory which the

the old Chancery Court and Common Law Courts—remains much as before, and similarly the particular learning and practice is still pursued by members of the “Chancery Bar” and the “Common Law Bar.” The Common Law is also in this sense contrasted with the principles which determine the exercise of jurisdictions recognised as authoritative in their own sphere, and

juristic investigator has only partially explored up to the present.

When reference has been made to the spiritual idea at the root of the systems of law, it is a spiritual idea independent of the association of ecclesiastical lawyers. It is the spiritual idea of an intuitive sense of Justice, which in Israel has expressed itself in the Theocratic Consciousness, in the Roman Law in the ascription to a sacred source of the origin of Law, and in the Common Law in a recognition of the reign of Theism, a recognition, from which natural justice has in due course necessitated the freedom of the individual to express his assent or dissent as the case may be.* But ecclesiastical lawyers have had their effect in the evolution of the world's thought and action. For instance, the Canonists, whose cultivation of legal study during the Middle Ages contributed so considerably to the preservation of legal tradition, have enabled the English system of Chancery, through its originally ecclesiastical head, to benefit by the acquisition of an ethical idea of justice less rigorous than the Common Law and by an access to the wide areas of the Civil Law for the establishment of the Principles of Equity. Their legal ideas and methods have found scope too in the courts of Admiralty, and Probate, and by their civilian legal psychology have broadened the span of English Law.† The Jewish Law in its full realisation did not contemplate a specialised and set apart ecclesias-

entitled to judicial notice, such as Local Customs, the systems of the Spiritual Courts, the Admiralty and Forest Courts. (ii) Such laws as were generally taken and holden for law before any statute was made to alter the same (See *Termes de la Ley*). The Common Law is thus contrasted with Statute Law. (iii) The general law of England, and of countries which have

* See *Shore v. Wilson*, 9, Cl, and Fin. 355. *R. v. Bradlaugh*, 15 Cox, C. C., 237. *R. v. Ramsay*, 15 Cox, C. C., 231.

See p. 18, *infra*. Jenks, *Short History of English Law*, p. 198. Sheldon Amos, *The History and Principles of Civil Law*, p. 456.

tical law; thus the Rabbinist is both ecclesiastical and general lawyer. The records of the history of the Canon Law go to show that the Canonist was ecclesiastical lawyer chiefly or exclusively by force of circumstances rather than choice. His system was sufficiently synoptic to cover a wide field of life, if political exigencies would have permitted. The controversies of forces in the Roman Empire, and the constitutional aspirations of secular spheres in England, appeared to have allowed the Canonist a restricted area of work. The Rabbinist had this advantage in that his jurisdiction in law has never become entirely limited to the ecclesiastical; his court is still a court of general law.*

Surely this is a miracle of the People of the Law, that their Law should to this day be a living link of their tradition and their aspiration. The Mohammedan Law†—which upon an Arabic foundation adopted and adapted much of the Civil Law of the Empire of the East and of the learning of its Capital at Byzantium—has yet the advantage of a political entity of its own for the carrying out of its legal ideas in full, so that the phenomenon of its continuance is by no means miraculous as compared with

derived their law from England, as contrasted with the (Roman) Civil Law, the legal systems derived from the Civil Law, or any other legal system. The exact meaning in each case has usually to be determined by the context. See the article "Common Law," by Sir Frederick Pollock, *Encycl. Laws of England*, vol. iii, pp. 228-230.

* The "Beth Din" (House of Judgment)—the Hebrew title for the Rabbinical Court—is an historic Jewish institution of the first importance. The "Beth Din" in London (the "Chief Rabbi's court") has received judicial notice in the English courts. It was the practice of one of the judges in the County Court area of London containing the largest number of Jewish inhabitants, to treat the rulings of the "Chief Rabbi's court" as authoritative upon questions of Jewish law. (See H. A. Smith, *The Law of Associations*, p. 47). Manchester and Leeds, cities with relatively large Jewish communities, each possess a "Beth Din," which sits periodically. In Liverpool a court is held from time to time, as circumstances require.

† See Sheldon Amos, *The History and Principles of Civil Law*, pp. 406-415.

the Jewish system which for so many centuries has enjoyed only voluntary or delegated jurisdiction.

Process—adjective law—is a genus of which there are many species, and if there is disapproval of certain stages in its development, a disapproval based on professed rational grounds, it must be sharply distinguished from the disapproval which, sprung from lack of knowledge of the objective of form, resolves itself into a denunciation of the genus, a denunciation which might be perfectly appropriate to the species.

No vocation is freed from the sententious shafts of the ubiquitous appraiser of everything. The surveyors and valuers of every institution, every movement, every leader, every follower, have an epithet for everybody. The loftiest vocation is not unfavoured—the preacher is reminded he is “preaching”—the doctor hears of his “decoctions”—the lawyer is told he is “quibbling.” The lawyer is especially the subject of consideration. There come forth references to his circumventions, his fictions, his special pleas, his affidavits, and the what-not which the know-alls can put their hands upon. They do not realise—these pantological assessors—that the process evolved the right; that the abstract rule was not the starting point but the goal. The history of process is thus the history of one of the most far-reaching instruments of the progress of Law, and through Law, for the maintenance of the progress of civilisation. Through process, evolutionary law has become possible, and through evolutionary law the energies of the force of progress and of the conservation of the idea of law could synchronize. Process has made engravings upon the consciousness of communities through its association with symbolism. Symbolism in law, if considered historically, is purely a chronological aspect of legal phenomena. It would seem that all symbolic processes in law

were realities at some anterior stage in the life history of communities, and that which was a real process in one period, has become, in a later period, attenuated to a reminiscent symbol of that which was previously the usual practice. And these engravings upon the consciousness of communities explain, in at least some of the great legal systems of the world, the necessity of the phenomena of fictions and circumventions.

The term Legal Fiction has been applied in jurisprudence to the assumption that a rule of law remains unchanged, and the fact that it has undergone amendment being either explicitly omitted from observation, or if admitted in effect, theoretically regarded as unmodified. Maine observes* :—“The fact is . . . that the law has been wholly changed . . . the fiction is that it remains what it always was.” . . . “It is not difficult to understand why fictions in all their forms are particularly congenial to the infancy of Society. They satisfy the desire for improvement which is not quite wanting, at the same time they do not offend the superstitious dislike for change which is always present. At a particular stage of social progress they are invaluable expedients for overcoming the rigidity of law . . . We must, therefore, not suffer ourselves to be affected by the ridicule which Bentham pours on legal fictions wherever he meets them. To revile them as merely fraudulent is to betray ignorance of their peculiar office in the historical development of law.”

Blackstone, in referring to legal fictions, remarks† :—“And these fictions of law, though at first they may startle the student, he will find upon further consideration to be highly beneficial and useful, especially as this maxim is ever invariably observed, that no fiction shall

* *Ancient Law*, ch. ii. † 3 *Bl. Comm.*, ch. iv, p. 43.

extend to work an injury, its proper operation being to remedy a mischief, or remedy an inconvenience, that might result in the general rule of law: so true it is that *in fictione juris semper subsistit æquitas*" (citing 11 Rep. 51, Co. Litt. 150).

Maine points* to the "body of law bearing a very close and very instructive resemblance to our case law . . . known to the Romans under the name of the *Responsa Prudentium*, the answers of the learned in the law," and speaks both of the English case law and the *Responsa Prudentium* (of the civil law), as resting on fictions. Referring to the English law, Maine observes† "we in England are well accustomed to the extension, modification, and improvement of law by a machinery which, in theory, is incapable of altering one jot or one line of existing jurisprudence . . . When a group of facts comes before an English court for adjudication, the whole course of the discussion . . . assumes that no question is or can be raised which will call for the application of any principles but old ones, or of any distinctions but such as have long since been allowed. It is taken absolutely for granted that there is somewhere a rule of known law which will cover the facts of the dispute now litigated, and that if such a rule be not discovered, it is only that the necessary patience, knowledge, or acumen is not forthcoming to detect it. . . . Probably it will be found that originally it was the received doctrine that somewhere '*in nubibus*' or '*in gremio magistratum*' there existed a complete, coherent, symmetrical body of English law of an amplitude sufficient to furnish principles which would apply to any conceivable combination of circumstances." In the Civil Law, "as with us all legal language adjusted itself to the assumption that the text of the old code

* *Ancient Law*, ch. ii. *Ibid.*

remains unchanged . . . yet, in point of fact books of responses . . . constantly modified, extended, limited, or practically overhauled the provisions of the Decemviral Law.”*

Maine, in chapter vi of the *Ancient Law*, refers to “the latter Rabbinical jurisprudence, which pretends to supply the ‘*Casus omissi*’ of the Mosaic Law.” This is the only instance found in his writings which directly takes into consideration the later Jewish jurists.† The belief in the existence of an Oral Law in the Jewish system, parallel with its statutory code, is supported by the obvious necessity of a method of hermeneutics to explain the elliptical passages of the code, ellipsis not only of text, but of meaning. The fact that the Jewish “*prudentes*” should have possessed a “Common Law” upon which to found responses in their sphere of interpreting the law to meet the varying circumstances which confronted them, is an historical phenomenon which jurists can readily appreciate.‡ If the objective of the legal fiction in the Civil Law and the Common Law was two-fold,—the maintenance of Law, together with the amendment of laws—the legal device of textual circumvention and textual expansion in the Jewish system served three purposes: it protected the idea of Law, brought the application of the law in line with current exigencies, and maintained the fabric in its integrity, so that it might endure unimpaired, to remain for all time as the text of the Law for Israel, handing down the traditional authority for its elucidation, its adap-

* *Ibid.*

† The text refers to the power of Testation.

‡ See Holland, *Jurisprudence*, ch. v. “The state has in general two, and only two, articulate organs for law-making purposes—the legislature and the tribunals. The first organ makes new law, the second attests and confirms old law, though under the cover of so doing it introduces many new principles.” 9th ed., p. 72.

tation, and its development.* The law is a link between Israel's past and future—for Jewry the law is $\kappa\rho\eta\mu\alpha \dot{\epsilon}\sigma \acute{\alpha}\sigma\iota$. These circumstances determine the distinction between the *raison d'être* of the Jewish juristic methods and the principles which underlay the methods of the Civil Law and the Common Law. All three have two of the principles in common—they thus partake of similar phenomena—but the Jewish system has the additional element at the foundation, which is essentially due to the nature of the entity of Israel and its history.†

In considering the scope of fictions, it should be observed that further fictions may develop in the exercise of fictional process—using the term fiction in its purely technical sense. There may be a fictional method of carrying out the fictional principle of “amendment without abrogation.” Thus there may be two fictions simultaneously at work—the first fundamental or general fiction of “amendment without abrogation”; the second, the particular or specific fiction superadded in the particular case. The view that this is not new law is the fundamental fiction, but the method by which the case has been brought before the court may also be fictional;

* For the Rabbinic aspects of Legal Devices see the chapters based on the Responsa of Rabbi S. J. Rabinowitz, Rabbi and Ab Beth Din (President of the Rabbinical Court) in Liverpool—*Jewish Review*, November, 1913. The chapters of the venerable and learned Liverpool Rabbi are paraphrased in an English version, with introductory observations, by the Rev. I. Raffalovich. The subsequent number of the *Jewish Review*, January, 1914, contains a contribution by the present writer upon the juristic phenomena of Legal Devices.

† Sir William Markby, in his *Elements of Law*, § 108, observes that “the Jews never seem to have arrived at any very clear notions about law, at least not about their own law.”

A reference to Sir Henry Maine by the present writer may be quoted with respect to Sir William Markby's learned work—“His attention does not seem to have been sufficiently drawn to Talmudical learning, and thus the Rabbinical evolution of the law. . . . shared the frequent relegation of Jewish culture to the by-ways. . . .” *Jewish Review*, January, 1914, p. 428.

and this is the specific fiction. Fictions are thus applied to substantive law (rights), and adjective law (remedies): and adjectival fictions abound in all systems. In an instance from the Civil Law, Maine points out* that the plaintiff averred that he was a Roman citizen, when in fact he was not; this the defendant was not permitted to traverse, and thus the case was brought within the jurisdiction of the Civil Law.†

Blackstone refers ‡ to the fictional process of assuming that a contract made at sea was made at the Royal Exchange or other inland place in order to draw the cognisance of the suit from the Courts of Admiralty to the Common Law Courts. "But our lawyers," Blackstone continues, "justify this fiction by alleging that the locality of such contracts is not at all essential to the merits of them," and the learned civilian, Sir Thomas Ridley, who proved the impossibility "for the ship in which such cause of action arises to be really at the Royal Exchange," is reminded that "such fictions are adopted and encouraged in the Roman Law." The learned Civilians of Doctors' Commons, who practised in the Admiralty, were ever on the defensive for the Roman Law they professed with such consistent attachment. Those devoted to the Common Law at the Temple evolved their system between the powerful energies of the Civilians of Doctors' Commons and the Equity Draughtsmen of Lincoln's Inn.

Fictions still have their value. Professor Dicey points out§ that "the notion that judges pretended to expound the laws which they really made is based upon ignorance

* *Ancient Law*, ch. ii.

† The necessity of this fictional process arose from the fact that the Romans in the earliest period of the Roman Law persistently refused to extend to anyone who was not himself a citizen the *jus civile* or civil law. See Moyle, *Imperatoris Justiniani Institutionum*, Introd.

‡ 3 *Bl. Comm.*, ch. vii, p. 107.

§ *Law and Public Opinion*, p. 491, 1st ed. ("Judge-made Law.")

of the fact that fiction is not fraud, and that legal fictions are the natural product of certain social and intellectual conditions. Nor, be it added, has the progress of civilization as yet enabled us to get rid entirely of something very like legal fictions."

Thus, right down to the first half of the nineteenth century, intricate fictions were in use with reference to some of the most frequent of legal transactions—litigious and non-litigious.

The fundamental fiction of an immemorial law carries with it a more convincing appeal for adoption—in fact the fictional element is more apparent than real. All must recognise that at whatever stage a system of law is promulgated, whether that consist of a code of extreme conciseness or of a more diffuse exposition, finality of application is never completely reached, and that, therefore, parallel to its promulgation there must exist some hermeneutic machinery, which can, upon the declared foundations of the law, apply legal decision to the varying questions calling for solution. While, therefore, in the case of the Civil Law and the Common Law it is a fiction in the general sense of the term to assert that those entrusted with the declaration of the law did not also mould the law, yet it is only a fiction in the legal sense to assert that the law is not altered by the processes of *responsa* and case law, for in the instances of *responsa* and case law the roots of the law are to be found in those sources to which each system ascribes its origin, and in respect of the fact that the roots were productive, and contained inherent in them the possibilities of that development which has taken place, it may be insisted that the law was there from the beginning. The assertion is possible of being completely sustained. The parallel existence of an

Oral Law in the Jewish system is a matter which presents no difficulty of belief for Jurists. "*Ex nihilo nihil fit*" is a maxim which the history of Jurisprudence tends to confirm. Thus the fundamental fictions appear, if not as essential elements in Law regarded in the abstract, yet as integral features in the great systems of the laws of the world, features which experience has shown to be material factors in securing recognition of the permanence of Law and the necessity of the evolution of laws. Codes are only rigid when they do not contain within them the power of expansion, and the Jewish jurists clearly illustrate the fact that their system of law is only final in the sense that its boundaries have been drawn and its configuration determined. Its design is concluded; its work recommences. Thus, those are rigid who deny interpretative authority its power, and those are really expansive who assert the continuity of the law.*

There remains to be more fully considered the parallelism in the histories of the legal systems. To aver, with the cultivated Austinian and Benthamite, or with the uncultivated iconoclast, that the existence of such parallels is testimony neither to the inherent necessity of the constituents of the systems, nor to the essential value of the constituents, is of no purpose. It suffices that the genius of the legal consciousness of each of the world forces of Israel, of Imperial Rome, and of England, have evolved, by methods remarkable in their similarity, a developed system of law; and if the pro-

* For a review of the History of Jewish Tradition, see Schechter *Studies in Judaism*, VII. Professor Schechter points out that it was firmly held that "everything wise and good . . . was at least potentially contained in the Torah [the Pentateuch] . . . The Rabbis developed from Deut. xxii, 8, a whole code of sanitary and police laws . . ." and from "Exod. xxi a whole *corpus juris* which might well excite the interest and admiration of any lawyer." *Ib.* pp. 227, 228.

cesses of development have been congenial to so large a sphere of humanity, it may only be a matter of opinion, but it is yet a matter of reasoned opinion, that such methods are natural both subjectively and objectively. The historical reaction produced by Maine has rendered possible a more proportioned perspective in the outlook upon legal development, and if there are those who cannot view with equanimity the stages by which there has been evolved the spirit of nomism—the source of the security of modern civilisation—they must be left on one side *vis-à-vis* the great majority of their predecessors who lived under the Law, and by whom the Law lived and lives—nor are these predecessors without a following.

“*Jura inventa metu iniusti fateare necesse est*” (Hor. Sat. II, 1, 3), as rendered by Wickham, “The source of Justice was the fear of Injustice,” reflects the view emphasised in Hebrew juristic learning, and expressed by Rabbi Chanina, who said: “Pray for the welfare of the Government, since, but for the fear thereof, men would swallow each other alive” (*Aboth*, III, 2).*

The whole system of English law progresses by means of its expansive judicial interpretation. The considerable volume of statutory enactment which has characterised contemporary legal history does not of itself represent a proportionate accession to the principles of English Law. The legislation has been either of a novel nature referable to modern views of social re-organisation and synthetic

*“The treatise, *Aboth* (“The Ethics of the Fathers”), is the 9th treatise of the 4th section of the *Mishnah*, which, together with the *Gemara*, is generically designated the *Talmud*. The *Mishnah* was, for the Jewish people, the first positive code—Graetz, *History of the Jews*, Eng. tr., vol. ii, p. 475. Graetz (*ibid.*, p. 463), referring to Rabbi Jehudah Hanasi, observes that “a work on which reposes his claim to an enduring name, and whereby he created a definite epoch, was the completion of the *Mishnah* (about 189 C.E.). “The *Mishnah* was the first Jewish post-Biblical code of laws”—Jewish Codes and Codifiers, by Rabbi Dr. Samuel Daiches, p. 87 (*Aspects of the Hebrew Genius*,” edited by Leon Simon).

processes of civic development, or a partial codification of legal principles which have already been asserted and formulated in a series of judicial decisions. In both cases, however, the legislation is not the last word, and the hermeneutic forces of authoritative interpretation are constantly at work, thus bringing out as fully as possible the continued necessity and the unimpaired validity of judicial commentary and construction.

The Jewish Law, the Civil Law, and the Common Law, have not only some common ground in the substance of their systems, but also in their history. The Jewish Law and the Common Law have histories which constitute a record of undeflected continuity. The history of the Civil Law is more in the nature of a genealogy. Its continuity is the continuity of succession.

The *Corpus Juris Civilis* was first edited under that title in 1583, three years after the *Corpus Juris Canonici* was published. The Dutch, in the 17th and 18th centuries, and the Germans of to-day are perhaps the foremost among modern Civilians. Within the British Empire, Scots Law, the Roman Dutch Law of South Africa and some other of the British colonies which were previously Dutch, have associated the Roman Law as an active force with British dominion, although, of course, in each case it is an adapted Roman law, or a structure with legal principles of the Civil Law as foundation; in England itself, the old Ecclesiastical and Admiralty Courts, where the Advocates of Doctors' Commons used to plead regularly, formed the seat of much learning in the Civil Law, which constituted so considerable an element in the legal system there propounded. The Civilians of Doctors' Commons established a centre of learning of International rather than Local Law.* The "reception"

* The practitioners in these Courts were not, as in the Common Law,

of the Civil Law—the supercession of the earlier Roman Law by the Justinian *Corpus Juris* in the empire of the West—took place in the middle of the 16th century in Germany, elsewhere earlier. The developed Roman Law became the common law of the various countries on the European continent, local customs being regarded as exceptions.† Thus, although the Roman Law has developed out of identification in point of detail, in point of principle it still exerts a powerful influence over civilisation, and it is obvious that its persistence has been rendered effective by the continuous chain of scholars, commentators, and Doctors—the band of Civilians who have kept alight the lamp of learning in the Civil Law. The Jewish system is in similar case. Both the Jewish Law and the old Civil Law have not possessed for centuries past distinctive political entities of their own, and they differ in this respect from the Common Law. They depend more and more upon the continuity of learning. But the history of the Common Law, as of the Jewish Law and the Civil Law, records a similar necessity of comment upon comment, case upon case, gloss upon gloss, in order to render the essential principles living realities.

The phenomena of three of the great legal systems of civilisation tend to show that the progress of law lies in and through, and not away and apart from, the forces of tradition. They show how essential Law is to life, and how necessary life is to the evolution of Law. Respect for

barristers and attorneys, but advocates and proctors. The advocates formed a society of “Doctors exercent in the Ecclesiastical and Admiralty Courts,” and settled in 1537 at “Doctors’ Commons.” The Civilian Advocates were usually also Canonists, having graduated in both faculties. The knowledge of the various systems of Law which they acquired from international learning rendered their aid of great value in negotiations with governments before the existence of an organised Diplomatic Service. See the article “Civil Law,” by Professor Holland—*Encycl. Laws of England*, vol. 3, pp. 90-92.

See article “Civil Law” by Professor Holland *supra*.

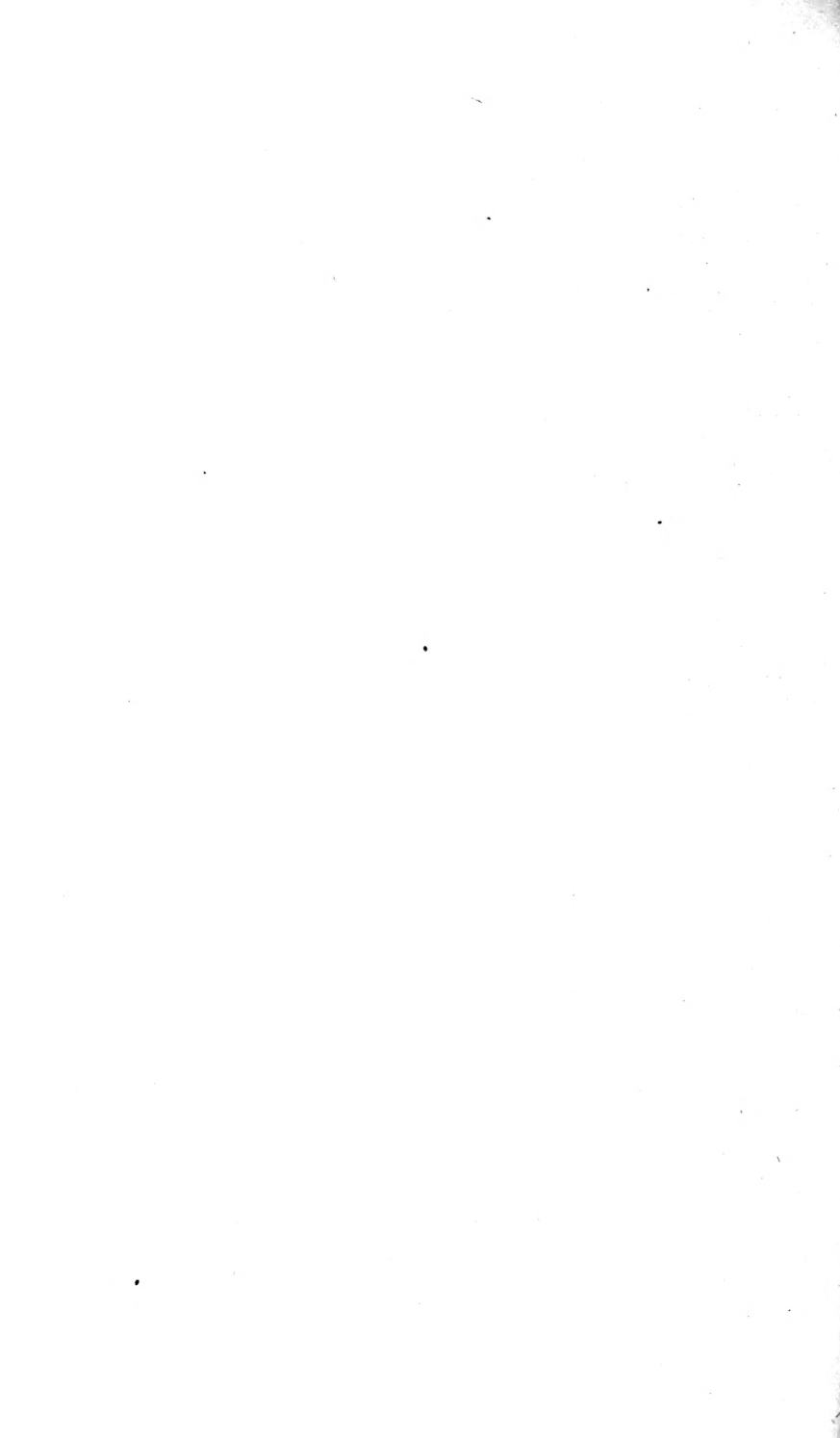
Law requires respect for laws, and the objective of Law necessitates the reign of Law, and thus the supremacy of the idea of Law must be the first necessity. Evolution by means of tradition is more preservative of Law than conservative of laws, and, therefore, the most powerful safeguard for the maintenance of civilisation, the existence of which is the condition of the possibility of the progress of humanity. The most convinced upholder of the principle of democracy is brought to the support of the principle of tradition, because custom is the life of tradition, and the most valiant custodians of custom are to be found in the aggregation of the people, for whose well-being the principle of democracy has been established and applied. The preservation of the idea of Law intact is of paramount importance for the politics of the world.

Philosophies may come, and philosophies may go, but the world is more and more recognising the rule of a purposeful law of progress. The movement of the progressive societies has hitherto been a movement from status to contract, observed Sir Henry Maine in a phrase which has become an historic text in modern Jurisprudence.* But to-day, a further movement may be discerned—the renewed recognition of Nomocracy as the condition of the ideal Commonwealth. It is a movement back to the idea of the Law as the road for the onward march of civilisation. It is not a movement in a new direction, it is a return to the old idea—Social Justice—rooted at the foundation of that pentateuchal literature, whose basic legal enactments are still the ethical cornerstones of the edifice of the civilisation which the white races enjoy. In the course of history, the Law has experienced vicissitudes of estimation. Instead of the benefit of the Law there arose the idea of the burden of

* *Ancient Law*, ch. v.

the Law, but Europe and its neighbouring territories none the less placed upon the shoulders of the inhabitants the *Corpus Juris* of the Civil Law—the Roman Law—or tended the growth of a Common Law, and the ethics of Judea appeared, not as the necessary Equity of the Law, but in the practice of Charity. But the wells of Charity may dry, while the rigours of the Civil Law and the Common Law endure. There must, then, be a re-uniting of Social Justice with Law and Order. Once again, Law must return—in and through the Law, and by the Law, to emancipation, and enlightenment, and progress.

In the growing volume of enactments seeking to establish and enforce fairer conditions of life, a more humane consideration of living, a more conscious realisation of community, with a fuller regard for the welfare of each individual, the Law returns once again to its glorious aim, its larger hope—the establishment of Right upon Earth, and Justice towards Mankind.



PREHISTORIC MAN IN THE LIGHT OF RECENT DISCOVERIES.

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[As an introduction to the subject proper, reference is made briefly to the earth's geological age, and also a short resumé is given of the earliest evidences of the Origin of Man.]

ACCORDING to Professor Sollas, the earth was once a "fluid haze of light." Our planet was slowly shaped into a globe out of the primitive nebula of which the whole solar system consisted.

This globe was intensely hot and probably liquid. A solid crust formed on the surface as heat was lost by radiation, and this crust forms the oldest rocks of *igneous* formation, such as, for instance, the granites. During this *Archaen* or *Eozoic* Period, which by some authorities is computed to have lasted for eighteen million years, the earth acquired its atmosphere and its oceans, and it is probable that the mysterious origin of life took place.

The later history of the earth, since the stratified rocks began to appear, is divided into four main periods known as the *Primary*, *Secondary*, *Tertiary* and *Quaternary*.

During the early part of the *Primary* or *Palaeozoic* Period the earth was mostly covered by seas, and the first well-defined forms of life were of marine origin; later fishes made their appearance, and insects began to flutter in the air; later still amphibians were developed, from which were evolved reptiles. The duration of the *Primary*

period is variously estimated at from three to six million years.

The Secondary Period brings the emergence of the dry land into importance greater than that of the sea. The oceans were richly peopled, on the land were huge reptiles or dinosaurs, also the ichthyosaurus and other monsters; and the pterodactyl, a large winged reptile, ruled the air.

During the latter part of this period small marsupials, the first mammals, appeared.

The Tertiary Period marks the true beginning of modern history, when the great outlines of geography were laid down, and the first representatives of modern plants and animals made their appearance. This period is again subdivided into the *Eocene*, *Miocene* and *Pliocene* systems.

During the Eocene age the mammals come to the front.

The Miocene is remarkable for the fact that true apes, man's first forerunners, lived in the forests.

The last of the Tertiary stages, the Pliocene, sets the stamp on the geological moulding of the earth's crust. Great herds of herbivora now appeared, and elephants of great size predominated.

The Fourth, or Quaternary Period constitutes the present existing period.

During the earlier portion of this age glacial conditions prevailed over most of the northern hemisphere, and the term *Pleistocene* or *Glacial* is applied thereto.

The vegetation was Arctic, and only animals like the reindeer and the hairy mammoth could endure the cold.

The Human, or Recent System is again subdivided into the *Palaeolithic* or "rough stone" age, the *Neolithic* or "polished stone" era, the *Bronze* and the *Iron* ages, these terms being descriptive of the types of implements used by prehistoric and early man. The first evidence of human origin consists of flint implements and incised bones,

supplemented later by a few specimens of human bones in a fossil state. The flint implements owe their preservation to their almost indestructible nature, and might well be described as "first evidences of the human mind." It is impossible to doubt that one of the Palaeolithic celts or arrow heads is as truly a work of the human hand, guided by a human intelligence, as is a modern axe.

These artefacts prove that the mental powers of fossil man were similar in kind to, if possibly less in degree than, those of living members of mankind. Similar flints are used at the present time. The scraper of the Eskimo and the Andaman Islander is but an enlarged and improved flint.

During the Pliocene age elephants were predominant. They were widely diffused over the globe, and comprised most varieties, both in the direction of gigantic and diminutive size, ranging from the pygmy elephant, no larger than an ass, to the *Elephas Meridionalis*. This was a gigantic animal, fully four feet taller than the biggest existing elephant, and bulky in proportion. The extremely important point to be noted is that fossil remains of this particular elephant are only found in *Pliocene* formations.

Now, at St. Prest, near Chartres, excavations discovered an extraordinary number of the bones of *Elephas meridionalis*, associated with other Pliocene species.

Professor Lyell, who visited the place, had no hesitation in calling it a "Pliocene river." Amongst these bones were several incised specimens, together with the flint knives which made the cuts, and other stone implements, rude, but unmistakably of the rough Palaeolithic type.

In this and other instances incised bones afford one of the most certain tests of the presence of man. The bones tell their own tale, and their geological age can be generally identified. Sharp cuts could only be made on

them when they were fresh, and the presence of dendrites or minute crystals alike on the sides of the cuts and on the surface of the bones, negatives any idea of forgery. The cuts can be compared with thousands of undoubted human incisions on bones from the Reindeer or other later periods, and with cuts now made on fresh bones with old flint knives. All these tests have been applied by experts, and their conclusions are that these marks were really made by human implements, guided by human hands.

In addition to this instance of St. Prest, Quatrefages mentions the evidence generally accepted by French geologists, of Tertiary man, as produced at Thenay and Puy Courny, in France; near Sienna and also Brescia, in Italy; also in the valley of the Tagus, Portugal. Evidence has also been adduced of the presumed existence of Tertiary man in both North and South America.

One might ask—is it not possible for the flints to be produced in these especial forms and shapes by accident? The test as to whether the flint is shaped by accidental fractures or by human design is afforded by the nature of the chipping. If it consists of a number of small chips, all in the same direction, with the result of bringing one face or side into a definite form adapted for some special use, the inference is strong that the chips were the work of design. Accidental fractures from frost or collisions could hardly be all in the same direction and confined to one part of the stone. Microscopic examination would shew, (in the case of design), parallel striae and other signs of use on the chipped edge such as would be produced by scraping bones and skins, but the surest test is afforded by a comparison with other implements of later date, or even those of existing savages, which are beyond all doubt the product of human manufacture. But what might be de-

scribed as irrefutable evidence of the existence of man is that afforded by the discovery of his actual bones.

And now we will deal shortly with a few of the most important of such discoveries.

During extensive excavations in 1892-4, on the banks of the river Bengawan, at Trinil, in Java, Dr. Dubois discovered part of a skull, a thigh bone and three teeth, in the Upper Pliocene beds.

These remains indicate an animal which, when erect, stood not less than 5 ft. 6 ins. high. The teeth and thigh bone were distinctly human in character, but the skull presented extremely prominent brow ridges, or projections over the eyes, and the cranial capacity was estimated at only 855 cubic centimetres, which is much below the lowest average human capacity, but at the same time is just as much *higher* than that recorded amongst the anthropoid apes. A great controversy waged round this creature. Some anthropologists regarded it as a degenerate man, others as a high form of ape, but now it is almost universally recognised as an intermediate type of being between man and apes. Dubois designated the creature *Pithecanthropus erectus*, or "the erect ape-man."

It is a matter of great significance as occurring in a region where it seems probable that man and ape diverged from their common pithecoïd ancestor.

Quaternary Man. It is not very long since it was necessary to adduce evidence that man existed during the whole of the Quaternary period. Little more than half a century has elapsed since the confirmation of Boucher de Perthe's discovery of palaeolithic implements in the old gravels of the Somme, and now the proofs have multiplied to such an extent that they are reckoned not by scores nor hundreds, but by tens of thousands. Stone tools and weapons are found in all the deposits of the Quaternary

period, together with the fauna of that period, from the extinct mammoth, woolly rhinoceros and cave bear, to the reindeer, horse and other existing animals.

These palaeolithic implements have been found in all parts of the world; they are found throughout Europe, in Algeria, Morocco, Egypt, South Africa, Natal, Hindostan, China and Japan; whilst in the New World they have been unearthed in various states of North America, also in Brazil and the Argentine Pampas. And this is only the result of the explorations of little more than forty years, and in some cases is only partial. Hence we can with authority state that Quaternary man spread over nearly the whole of the habitable earth.

The first actual discovery of the bones of Quaternary man was made in 1856 by Fuhlrott. He found a portion of a skull and skeleton in the valley of the Neander, near Düsseldorf, in a Quaternary deposit. This is the famous "Neanderthal" man. The skull was undoubtedly human, its capacity being estimated at 1,230 cubic centimetres, but it also exhibited prominent brow ridges, recalling the characters of *Pithecanthropus erectus*. The frontal bone was extremely narrow, a feature observed in the crania of aboriginal Australians and Tasmanians.

Since Fuhlrott's discovery several specimens of Neanderthaloid skulls have been found, namely, at Spy in 1885, Krapina in 1899, and later in Italy, Spain, at Gibraltar, and Galley Hill, in Kent. In 1908, at Le Moustier, France, another skeleton of the Neanderthal race was discovered. This race, the Neanderthal or "Canstadt," was thus distributed over the whole of Europe during the Quaternary period. Their appearance, as judged from their skeletons, has been described as follows:—they were short of stature, but powerfully built, with strong, curiously curved and bowed thigh bones, which are so

fashioned that they walked with the knees held slightly bent. Their long depressed skulls had very strong and prominent brow ridges, the lower part of the face projected considerably (prognathism), and their lower jaws sloped away from the teeth downwards and backwards, in consequence of the absence of that especially "characteristic feature of the higher type of man, the chin prominence" (Huxley). These men lived in caves, and were naturally dependent on food obtained by hunting. Numerous finds of charcoal and burnt bones prove that they not only knew how to kindle fire, but that they were also accustomed to roast the flesh of the animals they killed in the chase.

Thus early do we have proof of the victory of the human "mind over matter." Man stood in hostile relation to all the animals, and with few exceptions the animals he killed were immeasurably superior to him in physical strength or fleetness.

To-day our mighty "big game" hunters find it no easy task, with the aid of "magazine rifles" and up-to-date paraphernalia, to kill the elephant, rhinoceros and grizzly bear, or to bring down the swift reindeer. It was a question of Quaternary man finding out with his mental superiority the animal's unguarded moments, and then surprising it or entrapping it in hidden pits or snares, and despatching it with his primitive weapons.

All the more wonderful does the savage of this period appear to us, "for we see that he belongs to the first who exercised the human mind in the hard battle of life, and thereby laid the foundation of all later developments in the sense of progress and culture" (Oscar Fraas).

In conclusion, we will refer to two discoveries which might be rightly described as epoch-making in the history of earliest Man, namely, the *Mauer Jaw* and the *Pitdown skull*.

THE HEIDELBERG OR MAUER JAW.

In 1907 a lower jaw was discovered by workmen in a sand pit at Mauer, near Heidelberg. It is a most remarkable specimen. It is an extremely massive jaw, and exhibits the ape-like characteristic of absence of the chin. An extraordinary feature is the relatively small size of the teeth, all of which were preserved. The teeth are well within the range of human variation, whereas the size of the jaw renders it difficult to refer it to a human specimen. The ascending ramus is extremely wide, and the "notch" between the condyle and the coronoid process is relatively shallow. The "genial tubercles" are absent, from which it is inferred that the power of articulate speech was non-existent, or at any rate very defective.

Considerable controversy has ensued as to the identity of "Heidelberg Man." Is the jaw one which corresponds with *Pithecanthropus* or with Neanderthal man? Competent anthropologists adduce arguments for both sides.

Undoubtedly it is agreed that the jaw is not human nor pithecoïd, but is of ancestral form, and it would imply an immense range of distribution of the Javanese or Trinil type if we incline to the theory that the jaw is *Pithecanthropoid*.

Come we now to the *Piltdown skull*, which has been described as one of the most important discoveries of fossil man yet made, not only in England but in all the world. The "find" occurred in November, 1912, about nine miles north of Lewes, in Sussex, on a flat field near Piltdown Common. Mr. Charles Dawson, who is an enthusiastic geologist, was the fortunate discoverer.

It appears that four years previously some farm labourers were deepening a duck pond on the gravel bed, when they dug out a "thing like a cocoanut," and threw

the splinters on the rubbish heap near by. It was from this rubbish heap that Mr. Dawson recovered the greater part of the skull, but the lower jaw was found in the undisturbed stratum at a later date.

One is tempted to ask, how many fossil men have passed away in rubbish heaps unrescued? Fortunately, in this instance, there was a Mr. Charles Dawson at hand. The actual remains discovered are fragments of a massive skull with bony walls nearly half an inch thick; the fragments are sufficiently complete to give, when fitted together, a fairly accurate picture of the cranium or brain-containing part of the skull. The face and the greater part of the forehead are missing, but, fortunately, half the lower jaw with the first and second molar teeth *in situ* was recovered. The front part of the lower jaw with its teeth is missing, but it was possible to determine that the conformation of the chin was ape-like. No limb bones were found, nor any bones of the trunk. The cranial fragments are deeply stained and impregnated with iron, and are mineralised to just the same extent as the bones of fossil mammals found with them. These include the tooth of a Pliocene elephant, the molar cusp of a mastodon, the teeth of a hippopotamus, the bones of a form of beaver, and of an extinct form of horse.

The same stratum also contains samples of *eoliths*, the most primitive artefacts ascribed to human workmanship. These are stained the same tint as the fossil bones and the skull. Also were found in the same stratum two more highly worked flints, belonging to the *Chellean* type (a paleolithic type), but it was stated that these were not so deeply stained as the fossil bones and the eoliths.

The cranial capacity is estimated by Dr. Smith Woodward to be 1,070 c.c., but possibly a little more. The same author regards the skull as shewing female characters—

a cranial capacity of 1,000 to 1,300 is not uncommon amongst Aboriginal Australian women. Unfortunately, little more than the general shape can be accurately made out. The brain is flattened and bun shaped—pithecoïd, as in Neanderthal man. Like the Neanderthal skull the cranial tables, or bones of the roof of the skull, are enormously thick, being 10-12 mm., or about half an inch thick. The length of the skull, 190 mm., is of average human length, the width is considerable, 150 mm., the cephalic index being 78. The greatest width is situated low down, near the ear passages, the sides of the skull sloping upwards to the crown, thus giving to the crown of the head a peculiar retracted appearance. As before remarked, the lower jaw was ape-like in character, owing to the absence of the chin, which is not only retreating, like a dog's chin, but the lower edge of the jaw is sharp and projects inwards. Owing to the absence of certain bony projections for the attachment of muscles associated with articulation, it is presumed that the power of speech was not possessed by this individual.

Considerable discussion has arisen amongst anthropologists as to the antiquity and identity of "*Eoanthropus Dawsoni*," so named after the discoverer, Mr. Charles Dawson.

Dr. Smith Woodward, in his paper read before the Geological Society, considers this specimen to represent a new genus in the family Hominidae, as he considers the characters differ so widely (especially with regard to the lower jaw), from those of any other form of man. He gives it as his opinion that these fossil human bones were not of the same age as the Pliocene animals, but belonged to the later date of the paleoliths, that is, about the middle Pleistocene. Dr. Woodward here follows a recognised geological precept, that where a doubt exists as to which of

two particular periods a specimen is to be ascribed, the later date is chosen. Professor Keith, on the other hand, regarded the skull as Pliocene in age, the same age as the fossil mammals. In his opinion the finders had made a much more important discovery than they were conscious of, they had discovered what anthropologists had been looking for in vain these forty years past, namely, *Tertiary man*. His reasons for this opinion were:—1. That the *Heidelberg* lower jaw was known for certain to belong to the beginning of the *Pleistocene*, and shews human characters in the region of the chin, whereas the Sussex jaw was as distinctly Simian. If Dr. Smith Woodward was right in assigning the Sussex skull to the mid-Pleistocene or Chellean age, then it must be supposed that the inhabitants of Germany were comparatively human at the beginning of the Pleistocene; at a much later date those of England were ape-like. If, on the other hand, the Sussex skull were Pliocene this anomalous position would not exist.

Secondly. The characters shewn by the Sussex skull were exactly those which had been postulated for Pliocene man.

Thirdly. It was difficult to believe that such a primitive being could fashion the artistically worked Chellean flints; the eoliths found with the skull seemed much more likely to represent the extent of his skill.

Mr. Kennard, whose opinion regarding the geology of the South of England is regarded as authoritative, gave it as his conclusion that the gravel stratum at Piltown was very probably of Pliocene age.

Mr. Dawson, the discoverer of the skull, continued his digging during the present summer, and on August 30th, 1913, Father Teilhard, who was working with him, picked up a canine tooth, which Dr. Woodward believes belonged

to the half of the mandible originally discovered. The tooth corresponded in shape with that of an ape, and its worn face shewed that it worked on the upper canine in the true ape fashion.

There is no doubt that the skull belongs to a very lowly kind of man, a creature which must be regarded as one of the links hitherto missing in the chain of evolution of the human race, the direct ancestor of modern man and connecting him with the tertiary apes.

To account for the large brain associated with the Simian jaw, it has been suggested that the evolution of the large brain *preceded* the abandonment of the teeth as grasping organs and weapons.

It will, no doubt, have been observed that the specimens of earliest man are far from complete, therefore naturally much speculation and controversy arises.

We know not what wonderful secrets are still locked up in the safe repository of the fossiliferous strata, but we confidently anticipate further discoveries which will help to elucidate the absorbing and important problem of *Homo sapiens*.

THE LAW CODES AND
PRIESTLY JURISDICTIONS OF ANCIENT FAITHS.

WITH NOTES ON THE PRISTINE EVOLUTION
OF JUDICIAL PROCEDURE.

A PAPER READ BEFORE THE

LITERARY AND PHILOSOPHICAL SOCIETY OF LIVERPOOL.

8TH DECEMBER, 1913.

BY

J. HAMPDEN JACKSON.



THE LAW CODES AND
PRIESTLY JURISDICTIONS OF ANCIENT FAITHS.*

WITH NOTES ON THE PRISTINE EVOLUTION OF JUDICIAL
PROCEDURE.

By J. HAMPDEN JACKSON.

To discover the earliest rudiments of Civil and Criminal Courts, we must undoubtedly go to our far-off common ancestor, Primitive Man, in whose patriarchal hunting and fishing settlements we find Grandfather Law-Givers ruling the members of a wide-spread family, defining to them such customs as are obligatory, and penalizing misdemeanants and malefactors.

As families extend, and settlements become villages, patriarchs of groups become Law givers to the Clan, and associate with themselves other village elders: the luckiest hunter, the best weapon maker, the most potent sorcerer. Of such elements the early village Courts of Justice were formed.

As clans multiply, the necessity for a battle leader arises, and this post soon makes its holder the richest and most powerful man of his tribe. He develops into Tribal Chief, and in that capacity calls to his councils the heads

*Recent interesting allusions of Mr. Bertram Benas to the part played in the evolution of Law by Codes of the Ancient Faiths, encourage me to offer this communication to the Society. I had intended—after a previous paper of Mr. Benas—to put forward some remarks on the origin of Civil and Criminal Courts from the standpoint of Social Anthropology, and, much light having in our time fallen upon the Sacred Codices and Priestly Jurisdictions, it may be found interesting to combine these subjects in a short review.

of clans to discuss weighty affairs of the tribe, and decide serious civil or criminal issues, including matters referred from the village tribunals. Here, plainly, we have the germ of Superior Jurisdictions and Appeal Courts.

Combination in one personality of successful sorcery with victory in battle sooner or later presents itself in all primitive communities, and the development of Humanity from hunting life to that of the pastoral nomad favours this combination. Long before man reaches his third stage of social evolution as an agricultural herdsman, he has become the docile subject of High Priest Chiefs, whose tabernacles (moving with the nomad hordes from pasture to pasture) have become the core of government, religion, and legal administration.

When the shepherd populations finally encamp on great valley plains, and their wanderings end, tabernacles develop into temples, tents into walled houses and cities, while their Chiefs, becoming Priest Kings, engage in perpetual fighting with the temples and cities of rival Priest Kings. But amid the turmoil of this strife of centuries there persists steadily the organised administration of justice. Courts of Petty Jurisdiction sit daily at each city gate, those of Second Instance and of Superior Justice within the temple precinct, that of Final Appeal at the gate of the Priest King's Palace.

The records of the Old Testament writers are as interesting in these matters as those of Homer and Hesiod, or even as the mural testimonies of Egyptian mastabas. The Book of Judges, though throughout mainly a recital of the deeds of military and political leaders, keeps before us the recollection of a period when the duties of the Bench were paramount even to fighting and politics: when a Judge of Appeal not only rode on a white ass (a royal distinction), but his very sons and nephews were similarly

honoured. The Book of Ruth shows us the City Gate Court; the suitor choosing ten elders out of the rota of the qualified; the crowd gathering up to hear the case pleaded, and joining in with its opinions to fortify the decisions about to be made. The burden of Hebrew Prophet after Hebrew Prophet is of the corrupt administration of all classes of the judiciary: the Magistracy, the Judges, the Priestly Bench, the Supreme Tribunal. These are each clearly and severally distinguished.

Disputes referred to the Hebrew City-gate Court were of a similar category to those in Babylon, and there is evidence of a further similarity in Egypt. The primitive village tribunals had largely occupied themselves with charges of witchcraft, petty larceny and trespass. But at this more advanced stage of evolution we find on the Cause Lists disputes mainly in regard to:

- (a) Sales of land or crops.
- (b) Claims in reference to slaves.
- (c) Cases of marriage and divorce.

Of all these—particularly the last-named category—there was a plethora.

In the same three countries (and Babylon at that period included Assyria), cases of higher importance were taken to the Court of the Temple and laid before three or five priestly judges, whose ruling was termed “The Judgment of the God in the House of the God.”

Let us now turn to imagine what took place in all advancing civilizations when men discovered the art of writing.

“Before the invention of writing,” says Sir Henry Maine, “and during the infancy of that art, an aristocracy (mainly of priestly families), invested with judicial privileges, formed the only expedient by which accurate preservation of the customs and laws of the race or tribe could be at

“all approximated to. Their genuineness was (so far as “possible) insured by confiding them to the recollection of “a limited portion of the community. The law thus known “exclusively to a privileged minority, whether a caste, an “aristocracy, a priestly tribe, or a sacerdotal college, was “Unwritten Law, and there is no such thing as Unwritten “Law in the world *except this.*”

Nearly all the ancient codes are in verse—an expedient for the assistance of memory in times when writing was unknown. Aphorisms or proverbs were a similar expedient, and probably came before verse. Max Muller thought legal maxims were other early aids to recollection. Codes of memorized unwritten laws, built up through ages of juridical experience and civil and criminal practice, existed in every considerable country of the world before the art of writing, and we do injustice to early mankind, with its singularly efficient organizations, to assume that the score of sacred codes of the old world sprang suddenly and supernaturally upon society from the brain of Shamash, or Thoth, or Buddha, or the nymph Egeria, or even from some more august law-giver on Sinai.

The value of those codes, and of the kindred codes in Sparta and Athens, Persia and China—(almost every civilized nation, says Maine, can shew an example)—appearing at different historical dates, *but precisely similar periods in national progress in the art of writing*—lay in their publicity, in the knowledge they now furnished to everybody as to what he was to do, and what not to do.

The Roman Twelve Tables (as a Codex) date from 450 B.C., and were a fixture in writing of the body of Customary Law amassed at Rome during the previous 300 years. They were ratified specially by the Curies under presidency of the Colleges of Priests and Augurs, and, like other sacred codes, are much concerned with

religious ritual and observance. With the exception of a very few laws (*Leges*) the Romans, prior to this Codex, had no written law at all, and the object of those visits of the Decemvirs abroad when compiling these Tables was not to add laws from other codes, for they never had any such power, but to observe and ascertain by what methods the countries that possessed written laws had effected their concentration and published them to the people.

In Mr. Bertram Benas' able treatise, delivered to the Society this session, he refers to those ancient Jewish codes so well known to us through the Old Testament.

The administrative skill, the draughtsmanship, the widely based experience of mankind, shewn in the actual Mosaic section of those codes must have emanated from some wider field than what German scholars have been pleased to stigmatize, "a wandering Bedouin tribe." It would seem far more reasonable to suppose that—following the custom of all compilers of sacred law codes, and wrapping his codices in a divine allegory—Moses gave us therein the first Hebrew written version of a much more ancient unwritten body of laws, including, perchance, some codex already actually embodied in the Hieratic or Hieroglyphic of Heliopolis.

Sir Henry Maine says:—

The persuasion clung long and tenaciously to the human mind (in earliest times) of a divine influence, underlying and supporting every social institution and relation of life. In early law this belief meets us on all sides. (*Ancient Law*, pp. 5, 6).

In the most ancient Greek world, when the king decided a dispute by a sentence, his judgment was assumed to be the result of direct inspiration. Themis was the divine agent, suggesting judicial awards not only to kings but to gods (*the greatest of kings*), and these awards were the "Themistes" divinely dictated to the judge. (*Idem*. p. 4). An Englishman is better able than a foreigner to appreciate the fact of these Themistes preceding any real concep-

tion of law, because amid many inconsistent theories prevailing concerning English jurisprudence the most popular (and the one which most affects practice) is certainly the theory which assumes that *adjudged cases and precedents* exist *antecedently* to rules, principles, and distinctions.

The Laws of Moses, embodied in the Pentateuch, are documents so valuable to the student, historian, and theologian, that few enquire into their practical value as factors in the evolution of Law. Until our day their component parts were unclassified, and modern scholars now perceive in them four distinct systems of legislation :—

1. The Book of the Covenant (1300–1400 B.C.), probably the actually Mosaic Laws. (Exodus, xx–xxiii, and xxxiv, 11–26).
2. The Book of Deuteronomy, found in 621 B.C. by Hilkiah the High Priest in the Temple, in the reign of King Josiah.
3. The Law of Holiness, dating probably about Ezekiel's time. (Leviticus, xvii–xxvi).
4. The Priests' Code, containing all the balance of that legislation hitherto supposed as Mosaic, and including the account of Creation in Genesis, i.

The Babylonian Code of Hammurabi (2250 B.C.) was far more ancient, and until we know more of the actual Canon of the Old Laws of Egypt, it must remain a doubtful possibility whether Moses' Laws were partly based on one or the other of these greater codices. Mr. Chilperic Edwards' minute comparative examination of the Chaldean Code with the Jewish shows essential differences, notwithstanding many remarkable agreements both of letter and spirit.

Professor C. H. W. Johns (who has published the most important book upon the Babylonian and Assyrian Laws) says :—

The most distinctive Christian principles in our time are those taken over from the Jewish life of the Old Testament, but those Jewish ideas regarding Society have been inherited in turn from the far more ancient Babylonian Civilisation. And they bear the Hall Mark, not only of extreme antiquity, but of sterling worth.

With every deference to this learned and enthusiastic opinion, we may take leave for the view already expressed, that until more is known of that Ancient Egyptian Canon referred to by Diodorus Siculus, and of the higher learning of On, the city of Moses' education and the centre of Egypt's most learned cults (legal and religious), it is premature to recognise in Babylon the fountain head of the Mosaic Ordinances. It may be a not altogether insignificant coincidence, that On was the city of the Sun God, RA, and Hammurabi's Code, on a pillar of black diorite, bears the emblems of the Sun God, SHAMASH, at the top. Scientists are still unsettled among themselves whether Egyptian civilisation preceded Akkadian and Sumerian, or *vice versa*. Some of them already postulate that both Egypt and Akkad learned civilisation from a common source as yet unknown. It is quite clear that Hammurabi's Babylonian Codex was itself only a compilation and a digest of previous long existing laws and customs current in the regions of his dominion. Professor Johns shows that there were not only Laws but *Codes*, centuries before Hammurabi's, one of these being a Sumerian Codex that is continually quoted from in the Chaldean Tablet Contracts.

Rome under the Decemvirs was in a far more barbarous state (451 B.C.) than Babylonia under Hammurabi (2250 B.C.)

In ancient Babylonia the business of the law was all but exclusively in the hands of the priesthood, who included in their ranks the Scribes, without whom there could be no records and no books. In Ancient Egypt there was

no compulsory priesthood for Scribes; in Babylonia there was. The Halls of Superior Justice in both countries were at the gates of the chief temples, and there Judges, Scribes and "Elders" assembled. In Babylon the judges (if not all compulsorily priests) were at least a separate professional class, with whom the elders of the city were associated as assessors or jurors. Frequently, temple women (Hieroduloi) were judges, and while on that point, let us recall that Deborah the Prophetess was a Judge of Israel, holding her Appeal Court under a palm tree. The composition of the Superior Courts in Babylonia was just like similar courts in Egypt under the early Ramesside kings, a point we shall return to by and by. Appeals were heard at three chief centres, the Great Sanctuary of SHAMASH (Sun God) at Sippara, the Chief Temple of MARDUK (War God) at Babylon, and the Chief Temple of SIN (Moon God) at Larsam. Decisions in appeal were always headed:—THE JUDGMENT OF SHAMASH IN THE HOUSE OF SHAMASH, OF THE JUDGMENT OF MARDUK IN THE HOUSE OF MARDUK, OR THE JUDGMENT OF SIN IN THE HOUSE OF SIN. There were, therefore, three centres of Law Appeal, whilst in Egypt there were six, and in Judea but one.

In ancient Elam and ancient Persia, legal procedure and Law itself ran on similar lines to those of Babylon under Hammurabi, and I may recall that Assyria continued part of Babylonia throughout Hammurabi's time.*

In Egypt, taking A. Erman as our authority, the administration of justice was centralized. The office of judge, indicated by a LYNX in the hieroglyphic, is met with in many forms. The chief judge at all ages of Egyptian history held the most popular position in the kingdom.

*The methods of law courts in Chaldea, Assyria, Egypt, and the Semitic group of nations, with their systematized oaths, fines, and mulcts were pretty fully outlined on pp. 19-21 of my paper on the "Vectigalia Templorum." (See vol. lxi, Lit. and Phil. Soc. *Proceedings*.)

Ra (the Sun god) appoints Thoth (the god of Wisdom) as chief judge of his house and domain. We find chief judges always of very high birth, often among the high-priests of the great god. All judges belonged to one of the six great houses (law courts) in which the *secret words* (the Unwritten Law) are discussed. The *six great houses* were the ancient Courts of Justice under the Old Empire, but ceased to exist (except in name) under the New Empire. The *Great House*, or Court of Justice, was formerly a permanent assembly of priests and high officials, convened on certain days at the gate of each of the several Temple Sanctuaries. There were at that period on the permanent bench:—

1. A Judge of Agriculture.
2. A Judge of the city of Nechent (of origin beyond the ken of history), an active and constantly renewed item of the national bench.
3. A Judge of the Scribes.

And many others were qualified for the permanent rota as Chief Judges, for there was a gradation of promotion before a man reached these Chief Judgeships. He must be, for instance:—(a) Judge and Scribe; (b) Judge and Deputy Superintendent Scribe; (c) Judge and Chief Scribe.

Maat, Goddess of Truth, was the special patroness of the judges, all of whom (when men of rank) were her priests, and the Chief Judge wore her figure round his neck as a badge of office.

The laws which guided the King and Courts of Egypt are unfortunately unknown to us. Some of them are stated to have been of divine origin. "This decree of the gods, is written *in the writings of the Divine Words*" (the *Codex*). Diodorus was informed in Egypt that the *Sacred Books of Law* had been composed by Thoth, god of Wisdom. ("The writings of Thoth were on his tongue.")

Beside these old Sacred Laws there were others originating in historical times. Diodorus informs us expressly of laws made by certain wise kings. Under the Twelfth Dynasty the Canon of the Old Laws of Egypt (*i.e.* the Sacred Laws) was not considered finally closed. As to Civil Law and Justice there is scarcely any material to help us so far as Egypt is concerned.

Let us now turn shortly to the ancient codes of Greece (with Grote as our authority):—

In Athens, Draco in 624 B.C. was expressly ordered by the Archons to put down his Themistes or (as they were called in post Homeric days) his Thesmoi in writing. General law had before that been quite undistinguished from particular and individual sentences. The object of the change is stated:—"that they might be shown publicly and known beforehand." And Grote especially absolves Draco from Aristotle's charges of cruel severity of sentences, by pointing out that Draco only embodied the practices and laws of the old times gone before him, and had no power to enact new ones, as Solon afterwards had, whilst Aristotle (living two centuries later) had become familiar with an age when the spirit of penal legislation had become much milder.

Solon (in or about 594 B.C.), at a time of great public distress and turmoil, was given a sort of *carte blanche* to revise the prescriptive sentences and the established customs of Agrarian Law and Jurisprudence. Draco had no such instructions, and the public circumstances had in no way demanded that he should have.

The Laws of Solon were inscribed on wooden rollers and triangular tablets in the species of writing called Boustrophedon (lines alternating first from left to right and next from right to left like the course of a ploughman), and were preserved in the Acropolis, subsequently

in the Prytaneium. On the tablets, called Kyrbeis, were chiefly commemorated the laws respecting sacred rites and sacrifices: on the pillars or rollers (of which there were at least sixteen) were placed the regulations respecting matters profane.

The Seisachtheia part of his great Code undoubtedly rescinded practices that had long prevailed to the ruin of Athens and her population, and the peril of the state, but in doing so it brought back the customary legislation of earlier times, and practically re-adopted those Anti-usury (or Anti-interest) regulations from which the Babylonian and Mosaic Codes had never swerved.

Solon dealt with everything of human interest and duty. His regulations were political, religious, public, private, civil, criminal, commercial, agricultural, sumptuary, and disciplinarian. For many things—at that changing time from the ancient to the modern era—he had to devise regulations entirely new, but we need make no doubt whatever that the bulk of his great Codex was simply a reversion to stable former customs, and a placing of everything (old and new) in permanent form in writing.

The unwritten laws of Lykurgus of Sparta (c. 825 B.C.), which were approved by the Sacred Oracle of Delphi, were conveyed in apophthegms. We are rather in semi-mythical history here, but there is nothing more certain than that most of the laws afterwards attributed to Lykurgus, *were not in his Codex at all*. One thing is quite certain, viz. :—that he re-established by law a number of the ancient Dorian Laws and Practices, and never claimed that his Codex was of original dictation. So far as we possess materials upon which to form an opinion, the impression is given that Lykurgus's Codex was rather one of Institutions and a Constitution than a code of Civil and Criminal Law, but it is clear that he restored to use older and

milder Agrarian Laws from some ancient Dorian Code, and other statutes which had the effect of curbing the tyranny of a sovereign ruler.

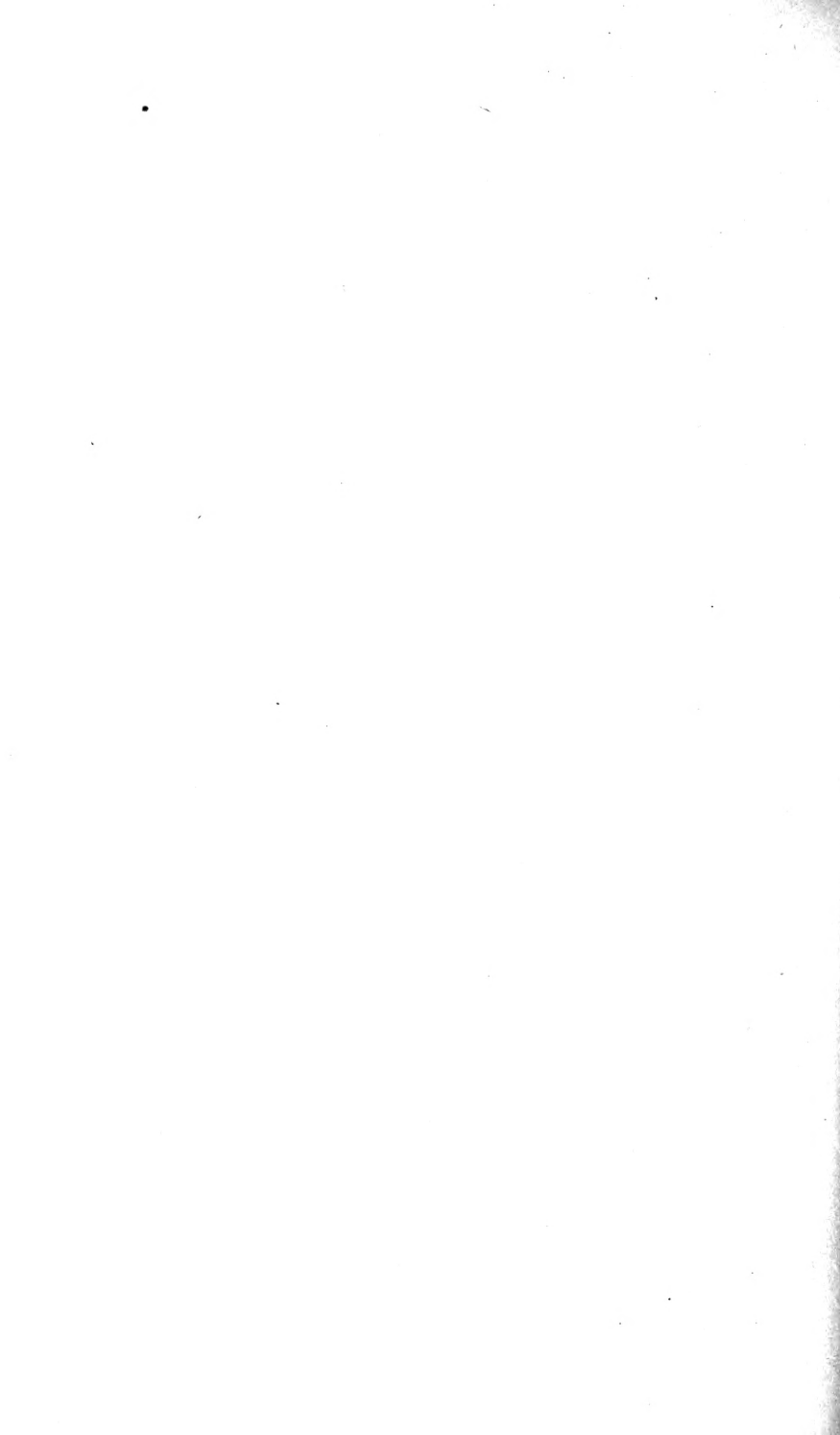
Broken fragments have reached us of a Phœnician Codex, and Sir M. Aurel Stein has last year brought home from Central Turkestan voluminous Ancient Tibetan Buddhist Codices, which are now being translated.

The Sanscrit Codes in Apastamba and Gautama are older than Menu; the Code of Vishnu is of somewhat later compilation. The great Codex of Hindustan, the Munnoo Smrita (or Institutes of MENU), is a Brahmin priestly compilation from codes of still more ancient date. Like other codices of its kind, it claims not only the highest antiquity, but to have emanated from the Deity in its complete form, and (like Leviticus) has much to do with ritual, priestly duty, and religious observances. Menu was possibly in some sense an emanation from the Deity, but his codex, whose exact date nobody can discover, bears marks of having been no earlier than about 400 B.C. Maine considers it a survival of the most valuable nature to our Indian Legislators and Jurists, and it has had the advantage of re-compilation from the Sanskrit by the late Sir William Jones. After careful study of this code, however, the impression left on Sir H. Maine's mind was, that it contained rather an ideal picture put forward by the priests of Brahma of what *ought* to be the laws, than what at any time had been actually administered as law in Hindustan. (*Ancient Law*, pp. 17, 18).

The Zoroastrian Code of the Parsees and Confucian Code of China require more careful study than I have as yet found time for. They are of a somewhat distinct class from the codices already alluded to, but Divine origin being claimed for both of them, we may surmise that they

will be written embodiments of old unwritten Sacred Law Practice.

Should occasion arise for extending the present brief communication into a paper, opportunity may be afforded me of reference to the Teutonic Codes, the Salic Law (oldest of the *Leges Barbarorum*), to the ancient Brehon Laws of Ireland, especially their Great Book of Ancient Law, the *Senchus Mor*, and to our own laws of Alfred and Canute.



THE BIRTHPLACE
OF
ARTHUR HUGH CLOUGH.



THE BIRTHPLACE OF ARTHUR HUGH CLOUGH.*

By ALFRED W. NEWTON, M.A.

It is known that the poet Arthur Hugh Clough was born in Rodney Street, Liverpool, on New Year's Day, 1819: but no enquiry as to the particular house had been made, until our late President, Dr. R. J. Lloyd, in his paper on Clough, read before this Society on the third day of October, 1898, urged that the house should be found and marked with a tablet.

Since then a tablet has been placed on No. 9 Rodney Street by the Historic Society of Lancashire and Cheshire, and the inscription thereon is to the effect that Clough and his sister, Anne J. Clough, were born in that house.

Why, it may be asked, ought we not to rest content with the decision of that Society?

The answer is that, in the first place, no reason for the choice of No. 9 has been published by the Society in its *Transactions*, and therefore its action is in the nature of an *ipse dixit* which invites criticism: and that, in the second place, the evidence of the contemporary directories and maps, as I will proceed to show, is to the effect that Clough was born in the house now numbered 74. It may be added, in the third place, that, according to a local tradition, Miss Clough believed the correct house to be "at the corner of Maryland Street," which No. 9 is certainly not. I am convinced that she was mistaken (if she really did believe it), but at any rate the tradition does not support the action of the Historic Society.

The poet's father, James Butler Clough, came to Liverpool early in last century, and started in business as a cotton merchant. He married in the year 1816, and

*This short paper contains the substance of an oral communication made to the Society on the 23rd March, 1914.

evidently brought his bride to the house then known as No. 5 Rodney Street. This follows from the fact that in the "Additions and Alterations" appended to the *Directory* of 1816, which was published the same year, his name appears with that address. In the body of the *Directory*, only his office address is given. He was evidently "in rooms" when it was first compiled, earlier in the year.

In the *Directory* for 1818 his name also occurs with the same address. As the appendix to that *Directory* contains statistics brought up to 9th June, 1818, and as James Butler Clough's name does not appear in the list of "Additions and Alterations," it seems a very probable assumption that he resided in the house then known as No. 5 Rodney Street when Arthur Hugh Clough was born on 1st January, 1819.

The next *Directory* was published in 1821, and from it we learn that Clough's father had removed in the interim to No. 6 Vernon Place, Mount Vernon.

Towards the end of 1822 he left England, with his wife and children, for Charleston, South Carolina.

The house No. 5 in 1816-19 was the one now numbered 74 in Rodney Street, as is apparent from the following facts.

The numbering of the Rodney Street houses was then continuous, beginning on the left hand side from Duke Street (now Upper Duke Street) and returning on the opposite side after reaching Mount Pleasant. Sometime in the years 1837-9, the Corporation changed it to the present fashion.

The house taken by James Butler Clough in 1816 was, therefore, the fifth house from Duke Street. But No. 74 is the eighth house. The explanation is that the land on which Nos. 88, 86, and 84 now stand was then lying

waste, as the maps show, and three new houses were built upon it in or about 1824. They first appear in the 1825 *Directory*. J. B. Clough's house had then become No. 8, and the tenant was the Rev. Richard Cardwell, the brother of Mr. John Cardwell, who occupied Mr. (afterwards Sir) John Gladstone's former house, which was numbered 11 at the same time that J. B. Clough's house was numbered 5, but became 14 on the building of the three new houses, just as J. B. Clough's house became 8. These two houses remained 8 and 14 respectively until the Corporation reversed the numbering, some time in the years 1837-9, as before mentioned.

When this change took place, Mr. Gladstone's former house became No. 62, and James Butler Clough's house became 74, as they both are to-day.

To revert to the tradition that Miss Clough believed that she and her brother were born in "the house at the corner of Maryland Street," it is quite possible that she believed it, and yet was mistaken. For her belief to be true (if she really did believe it), we must suppose that James Butler Clough left the house then known as No. 5, and removed to the other side and end of Rodney Street after June, 1818, and then removed again to 6 Vernon Place before 1821. We cannot deny the possibility of such a removal, but the improbability is very great indeed; and there is no evidence in its favour, for even the tradition respecting Miss Clough's belief insists that the Cloughs remained in the same house while living in Rodney Street.

My theory of the growth of the tradition is that, some time after the return of the Clough family to England and the death of J. B. Clough—perhaps when they were living in Vine Street—Mrs. Clough informed her daughter that she was born at 5 Rodney Street. On going to look at the house, Miss Clough naturally supposed the present No. 5 to be it, knowing nothing of the change in the numbering.

She would then speak of the house as "very close to Maryland Street," and in time this became "at the corner of Maryland Street." Strictly speaking, no house in Rodney Street is at the corner of Maryland Street. The house at the corner of Maryland Street is one with its entrance in that street. The next to it is No. 7 Rodney Street.

It seems to me practically certain, on the evidence, that the poet was born in the house then known as No. 5 Rodney Street, and it is quite certain that the No. 5 of 1st January, 1819, is the No. 74 of to-day.

I append plans of Rodney Street for the years 1816, 1821, 1837, and 1839, which will perhaps make the changes in the numbering more clear. The additional names of residents are given with the same object.

The plans are, of course, merely rough ones, and do not profess to be maps. They indicate, however, approximately the position of the houses, and especially show the complete change in their numbering in the interval between the issue of Gore's *Directory* for 1837 and that for 1839. The houses numbered 79, 80, 81, and 82, in 1837, which became Nos. 69, 71, 73, and 75, in 1839, were, of course, houses in a row as they are to-day, not detached as the plans might lead one to suppose.

The 1839 *Directory* is the first Gore's *Directory* with the list of occupiers of each street in the numerical order of their houses. Before that date, only a general list of Liverpool residents in the alphabetical order of their names was given in all Directories, with the exception of the Directory incorporated in Baines' *History, etc., of the County Palatine of Lancaster* (vol. I, Liverpool, 1824). This circumstance adds greatly to the difficulty in determining the changes in the numbering of houses in Liverpool streets in the early part of last century, necessitating, indeed, the compiling of street lists by any investigator.



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